रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

# भारत का राजपत्र
# The Gazette of India

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सं. 43] नई दिल्ली, अक्तूबर 23—अक्तूबर 29, 2022, शनिवार/ कार्तिक 1—कार्तिक 7, 1944
No. 43] NEW DELHI, OCTOBER 23—OCTOBER 29, 2022, SATURDAY/KARTIKA 1— KARTIKA 7, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

## विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 20 अक्तूबर, 2022

**का.आ. 1032.**—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड(क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, रियाद में श्री मोह. अकरम, वैक्तिक सहायक को दिनांक 20 अक्टूबर, 2022 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2022(46)]

एस.आर.एच. फहमी, उप सचिव (कांसुलर)

**MINISTRY OF EXTERNAL AFFAIRS**

**(CPV Division)**

New Delhi, the 20th October, 2022

**S.O. 1032.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Mr. Moh. Akram, Personal Assistant as Assistant Consular Officer in the Embassy of India, Riyadh to perform the Consular services with effect from October 20, 2022.

[F. No. T-4330/01/2022(46)]

S.R.H. FAHMI, Dy. Secy. (Consular)

नई दिल्ली, 20 अक्तूबर, 2022

**का.आ. 1033**.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, सरकार भारत के राजदूतवास द हेग में मनेश मगर, सहायक अनुभाग अधिकारी को दिनांक 20 अक्टूबर, 2022 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2022(47)]

एस.आर.एच. फहमी, उप सचिव (कांसुलर)

New Delhi, the 20th October, 2022

**S.O. 1033.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Manesh Magar, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, The Hague to perform the consular services as Assistant Consular Officer with effect from October 20, 2022.

[F. No. T-4330/01/2022(47)]

S.R.H. FAHMI, Dy. Secy. (Consular)

नई दिल्ली, 21 अक्तूबर, 2022

**का.आ. 1034**.— राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास, दुबई में अभिमन्यु और दीक्षा वर्मा, सहायक अनुभाग अधिकारियों, को दिनांक 21 अक्टूबर, 2022 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2022(48)]

एस.आर.एच. फहमी, उप सचिव (कांसुलर)

New Delhi, the 21st October, 2022

**S.O. 1034.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Sh. Abhimanyu and Ms. Diksha Verma, both Assistant Section Officers as Assistant Consular Officer in Consulate General of India, Dubai to perform the consular services with effect from October 21, 2022.

[F. No. T-4330/01/2022(48)]

S.R.H. FAHMI, Dy. Secy. (Consular)

## श्रम और रोजगार मंत्रालय

नई दिल्ली, 29 जुलाई, 2022

**का.आ. 1035.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, (ओ एंड एम), एनटीपीसी, सीपत, बिलासपुर (छ.ग.); अतिरिक्त प्रबंधक और मानव संसाधन (प्रमुख), मैसर्स एरा इंफ्रा इंजीनियरिंग लिमिटेड, नोएडा (यूपी); परियोजना प्रबंधक, एरा इंफ्रा इंजीनियरिंग लिमिटेड बिलासपुर (छ.ग.)के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, छत्तीसगढ़ कर्मचारी मजदूर एकता यूनियन, बिलासपुर (छ.ग.), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट के (संदर्भ संख्या CGIT/LC/R/116/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.07.2022 को प्राप्त हुआ था।

[सं. एल-42011/88/2017-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

## MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 29th July, 2022

**S.O. 1035.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/116/2017) of the Central Government Industrial Tribunal cum Labour–Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager(O&M), NTPC, Seepat, Bilaspur (Chhattisgarh);The Additional Manager &HR (Head), M/s Era Infra Engineering Ltd., Noida (U.P.); The Project Manager, Era Infra Engineering Ltd. Bilaspur (Chhattisgarh) and the President, Chhattisgarh karamachari Mazdoor Ekta Union, Bilaspur (Chhattisgarh), which was received along with soft copy of the award by the Central Government on 27.07.2022.

[No. L- 42011/88/2017- IR (DU)]

D. K. HIMANSHU, Under Secy.

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/116/2017**

**Present:** P. K. Srivastava, H.J.S..( Retd)

Shri Omprakash Gangotri
President, Chhattisgarh Karmachari
Mazdoor Ekta Union,Bilaspur
Bilaspur (Chhattisgarh)-49500 ... Workman

**Versus**

The General Manager(O&M)
NTPC, Seepat
PO-Ujjwal Nagar,
Bilaspur(Chhattisgarh)-495001.

2. Additional Manager & HR(Head)
M/s. Era Infra Engineering Ltd.C-56/41
Sector-62,Noida(U.P.)-201301

3. The Project Manager
Era Infra Engineering Ltd.
NTPC, Seepat Site,
PO-Ujjwal Nagar,
Bilaspur(Chhattisgarh)-495001. ... Management

**AWARD**
**(Passed on 20-7-2022)**

As per letter dated 9/8/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42011/88/2017-IR(DU). The dispute under reference relates to:

"**Whether the action on the part or M/s Era Infra Engineering Ltd. A contractor working under the principal employer at NTPC, Seepat site in terminating the workman namely Shri Kaushal S/o Shri Neer Singh and not paying the terminal benefits as espoused by the President of Chhattisgarh Karmachari Mazdoor Ekta Union, Bilaspur is legal and justified. If not, what relief the above names workman is entitled to? .**"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The workman side appeared through its learned counsel on 10-7-2019. The management learned counsel also appeared on the same date. The learned counsel for Management Party No.2 i.e. M/s Era Infra Engineering Ltd. Filed its compliance on 25-10-2019. The workman side did not file any statement of claim. They were given last chance for filing statement of claim vide order dated 25-10-2019 even then the workman side did not care to file statement of claim till date. Today none was present from the side of the workman.

3. Since no statement of claim was preferred from the side of the workman, the Management No.1 and No.2 also preferred not to file any written statement of defence.

4. The initial burden to prove his case lies on the workman in which the workman has miserably failed. Hence holding the claim of the workman not proved the reference deserves to be answered against the workman and is answered accordingly.

5. On the basis of the above discussion, following award is passed:-

**A. The action of the management as mentioned in the reference is held to be just and proper.**

**B. The workman is held entitled to no relief.**

6. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 20.7.2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2022

**का.आ. 1036.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आयुक्त (उत्तर), उत्तरी दिल्ली नगर निगम, नई दिल्ली,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री धर्मपाल और 24 अन्य के द्वारा महासचिव, एमसीडी जनरल मजदूर यूनियन, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ संख्या 79/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.08.2022 को प्राप्त हुआ था।

[सं. एल-42011/74/2016-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 19th September, 2022

**S.O. 1036.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2016) of the Central Government Industrial Tribunal-cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner (North), North Delhi Municipal Corporation, New Delhi, and Shri Dharampal Pal & 24 others through MCD General Mazdoor Union, New Delhi, which was received along with soft copy of the award by the Central Government on 24.08.2022.

[No. L-42011/74/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

**Present:** Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

**INDUSTRIAL DISPUTE CASE NO. 79/2016**

**Date of Passing Award- 17.08.2022**

**Between:**

Shri Dharampal & 24 others through MCD General,
Room No. 95, Barrack No. 1/10,
Jamnagar House, Shajanhan Road,
New Delhi. ... Workman

**Versus**

The Commissioner (North),
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Shyama Prasad Mukharjee
Marg, Minto Road,
New Delhi-110002.

... Management

**Appearances:-**

Shri B K Prasad (A/R) : For the claimant

Shri Shitiji Vats (A/R) : For the Management

**AWARD**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of North Delhi Municipal Corporation, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/74/2016 (IR(DU) dated 24/08/2016 to this tribunal for adjudication to the following effect.

> "Whether the workmen as mentioned in Annexure-A are entitled to the equal pay for equal work w.e.f 01.04.1988 and onwards, and are entitled to 50% other wages of services rendered as daily wages/Muster Roll? If not what relief the workman concerned are entitled to?"

As per the narratives in claim statement, the claimants described in Annexure A of the reference have been performing their duties in the works Division of North Delhi Municipal Corporation at Rohini in different capacity such as Beldar, carpenter, Nala Beldar etc. They were initially appointed as Muster Roll Employees and their initial date of appointment were different, but within the period between 1980 to 1997. On different dates all the claimants as per Annexure A were regularized in service and working as such till date. In the year 2013 some employees of NDMC had approached the Hon'ble High Court of Delhi claiming equal pay for equal work and other benefits. The Hon'ble Division Bench of the High Court, by their order passed in LPA No 573/2013, titled as NDMC vs. Harpal Singh& Others granted equal pay for equal work to the applicants with effect from 1.4.88 on wards and also allowed the prayer for counting 50% of the period of service rendered as Muster Roll Employees for the pensionary benefits. The claimants of the present proceeding stand in same footing as that of Harpal Singh & others and thus demanded the same benefit as allowed by the Hon'ble High Court of Delhi and implemented by the management NDMC. But their representation was never considered by the management and the claimants approached the MCD General Mazdoor Union for redressal of their grievance. Steps were taken for conciliation and the same since failed, the appropriate Government referred the matter to this Tribunal for adjudication as per the terms of the reference. The claimants in this claim have prayed for a direction to the management to grant them equal pay for equal work from the date of their initial engagement in Muster Roll and for counting 50% of the period spent as Muster Roll Employee for pensionary benefits. The claimants have relied upon the judgment passed by the Hon'ble High Court of Delhi in LPA No 573/2013 and the policy circular of the Management dated 21/10/1990 and the minutes of the meeting of the senior officers of the management held on 11th June 1988.

Being noticed the management NDMC appeared and filed written statement challenging the claim on various legal and factual grounds. It has been pleaded that the claim is not maintainable for want of cause of action and the issue of equal pay for equal work is a policy decision to be taken by the Management and can be implemented after due approval of the house of NDMC. The claim of the claimant that the management took a decision to grant pay to it's employees at par with the employees of CPWD is false. The other stand of the management is that NDMC being an Autonomous Body formulates it's own policy with regard to the service condition of the employees and in phased manner regularizes the service of the Muster Roll Employees taking into consideration their seniority and subject to the availability of work and post. But on no occasion, the said Muster Roll Employees after their regularization, have been allowed to draw equal pay for equal work from the initial date of joining in the Muster Roll. It has also been pleaded that the Management, as per it's circular dated 08/09/2000, is considering and counting 50% of the period of service in Muster Roll for pensionary benefits. Hence the management has pleaded for dismissal of the claim as not maintainable.

On the basis of the pleading the following issues were framed.

**ISSUES**

1- whether the claim is not legally tenable in view of the various objections taken by the management

2- in terms of reference

On behalf of the claimants Shri B K Prasad in the capacity of the president of the union representing the claimants testified as WW1 and produced few documents exhibited as Ext ww1/1 toWW1/6. These documents include the list of the workmen in respect of whom the reference has been received, the policy of CPWD dated 21/10/1990, with regard to the pay pattern of it's employees , (ext ww1/2) minutes of the meeting of the senior officers of MCD adopting the pay pattern of CPWD,(ext WW1/3). Similarly on behalf of the management one of it's engineer by name Jitendra Kumar testified as MW 1. He also filed three photocopies of the circulars to substantiate that the management is considering 50% of the period served as Muster Roll Employees for granting pensionary benefit to the employees after regularization of their service.

In view of the oral and documentary evidence adduced it is now to be decided whether the claimants are entitled to equal pay for equal work w.e.f the date of their initial appointment and are also entitled to calculation of 50% of the time served as the muster roll employee for calculation of their pensionary benefit. The evidence on record shows that the claimants were initially engaged as Beldar, carpenter, fitter, Nala Beldar etc and their date of initial appointment varies from 1980 to 1997. while one was appointed in the year 1980 and continued in the muster roll till 1988, some others were appointed in 1986,1995,1997. The detail dates of their appointment and regularization has been described in annexure-A appended to the reference received from the government. This aspect has not been disputed by the management either in the pleading or in the evidence. On behalf of the claimant a document has been filed and marked as exhibit WW1/3. This is the minutes of the weekly meeting of the senior officers of MCD wherein a decision was taken on 16.06.1988 to increase the wage of daily rated unskilled workers in accordance with the decision of the Hon'ble Supreme Court and a pay scale was also prescribed. In the said meeting it was also decided that the equal pay for equal work shall be extended following the pay pattern of CPWD and in compliance of the direction of the Hon'ble Supreme Court.

The Hon'ble Supreme Court in the case of **Surender Singh vs. Engineer in Chief CPWD (ATR 1986 SC Page 1976)** decided on 17.01.1986 while dealing with the question of equal pay for equal work in respect of the daily rated workers performing the same duty as performed by their regular counter parts held that there should be equal pay for equal work of equal value. The court observed that it makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. Hence, they must receive same salary and condition of service at par with the regular employees discharging the same nature of work. A similar view was also taken by the Hon'ble Supreme Court in the case of **Randhir Singh vs. Union of India (1982)1 SCC 618** wherein the Hon'ble Apex Court came to hold that for discharge of equal nature of work the employees are entitled to equal pay. It doesn't matter if they are working in different departments. Again in the year 2017 the Hon'ble Apex Court in the case of **State of Punjab vs. Jagjit Singh (2017) LAB.I.C 427** while considering the concept of equal pay for equal work have observed:

> "the Principle of equal pay for equal work can be extended to temporary employees though differently described as work charge, daily wage, casual, adhoc, contractual and the like. It is fallacious to determine artificial parameter to deny the fruits of labour. The employee engaged for the same work cannot be paid less than another who performs the same duties and responsibility. Such an action besides being demeaning strikes at the very foundation of human dignity. Anyone who is compelled to work on lesser wage does not do so voluntarily. He does so, to provide food and shelter to his family at the cost of self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffers immensely, if he does not accept the lesser wage. Any act of paying less wage as compared to other similarly situated constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. "

The matter came up for consideration before the Hon'ble High court of Delhi in the case of **NDMC vs. Harpal Singh (LPA No. 573 of 2013 decided on 27.08.2013)**. The Hon'ble High Court after considering the pronouncements of Hon'ble Supreme Court on the subject held that the daily rated employees working in the NDMC are entitled to the wage as paid by CPWD to the daily rated workers and also held that the said workers shall be extended the benefits of 50% of the service rendered as the daily rated workers for calculation of the length of service for the purpose of pensionary benefit. Thus, on a mindful reading and careful analyses of the above said judgments it appears that the Hon'ble Apex Court as well as the Hon'ble High Court of Delhi have taken a clear view and given a direction for giving the wage of the daily rated workers at par with the said workers of CPWD and to count 50% of their service rendered as daily wagers for computing the length of service to grant pensionary benefit. The document filed by the claimant shows that a decision to that effect was taken by MCD.

The Ld. A/R for the management during course or argument pointed out that NDMC is an autonomous body and no decision has been taken for grant of equal pay for equal work at par with the workers of CPWD. This argument of the management is not accepted in view of the pronouncement of the apex court and the decision taken by the MCD. It is worth mentioning here that the management has partly implemented the order of the Apex Court which is evident from the circulars filed by the management witness and marked as A, B, C being the photocopies. These documents shows that instructions were issued by the MCD to All Additional Commissioner and Heads of the department to count 50% service of the daily wager for pensionary benefit following the instruction issued by the Central Government. Not only that by another circular dated 04.04.2012 marked as B the MCD had also issued a instruction to its officers to scrupulously follow the circular dated 08.09.2000 for calculating 50% of the service rendered by the daily wager for grant of pensionary benefit. The oral evidence of MW1 also supports this view. Thus, it is clear from the above oral and documentary evidence that the management has accepted 50% of the daily wage service for extending the pensionary benefits. Now, the question remains whether the claimants are entitled to equal pay for equal work and from which date? It is the argument of the Ld. A/R for the

claimants that the said benefit shall be allowed to them w.e.f their initial date of appointment and after regularization. But the management took strong objection and argued that the same has never be allowed by NDMC in respect of any of its employees. In the case of Harpal Singh referred supra the claimants were granted equal pay for equal work w.e.f 01.04.1988 i.e. from the date of their initial appointment. It is not understood why there would be deviation in the case of the present claimants. From the facts and the evidence available on record it is clear that the management has already increased the wage of its staff from the date of their initial appointment as per the verdict of the Apex Court. The claimants of this proceeding stand in the same footing with that of the workers who have already been granted the said benefit. Hence it held that the wage of the claimants of this proceeding are to be calculated in the manner given in exhibit WW1/3 i.e. the observation made in the minutes of the weekly meeting of the senior officers from the date of their initial appointment as mentioned in annexure A to the reference received from the appropriate government. Since the management has already admitted that 50% of the service rendered as daily rated work are being taken into consideration for grant of pensionary benefits, no specific direction need to be issued presuming that the sais period rendered by the claimants shall be considered for extending pensionary benefit to them. Hence, ordered.

**ORDER**

The reference be and the same is answered in favour of the claimants. It is held that claimants are entitled to equal pay at par with their regular counter parts on the Principle of equal pay for equal work as stated in resolution dated 16.06.1988 marked as WW1/3 from the date of their initial engagement as mentioned in annexure-A of the reference and shall also be granted the pensionary benefit taking into consideration 50% of the period of service rendered as daily wager. The management is directed to fix the pay of the claimants as stated above within 3 months from the date of publication of the award and release the arrear within 4 months from the date of publication of the award failing which the amount so accrued shall carry interest @9% per annum from the date of accrual and till the final payment is made. The list of the claimants to whom the benefits shall be granted is annexed here with this award. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

**LIST OF THE WORKMEN**

| S.No. | Name | Father's Name | Designation | Date of Employment on Muster Roll | Date of regularization |
|---|---|---|---|---|---|
| 1. | Dharampal | Mewa Ram | Beldar | 29.05.1995 to 31.03.2003 | 01.04.2003 |
| 2. | Bal Kishan | Isokanwar | Beldar | 16.11.1995 to 31.03.2003 | 01.04.2003 |
| 3. | Bijender Singh | Jagdhir Singh | Beldar | 15.11.1994 to 31.03.2003 | 01.04.2003 |
| 4. | Suresh Kumar | Ramchander | Carpenter | 15.11.1994 to 31.03.2003 | 01.04.2003 |
| 5. | Prem Singh | Ram Niwas | Beldar | 15.11.1994 to 31.03.2003 | 01.04.2003 |
| 6. | Rameshwar | Diwan Singh | Beldar | 15.11.1994 to 31.03.2003 | 01.04.2003 |
| 7. | Remal | Baldeo | Fitter | 15.11.1994 to 31.03.2003 | 01.04.2003 |
| 8. | Jagdish Chander | Radhey Shyam | Beldar | 15.06.1990 to 31.03.1999 | 01.04.1999 |
| 9. | Umed Singh | Rishal Singh | Nala Beldar | 01.04.1987 to 31.03.1995 | 01.04.1995 |
| 10. | Ajab Singh | Lahri Singh | Beldar | 16.07.1980 to 31.03.1988 | 01.04.1998 |
| 11. | Mahabir Chand | Prem Chand | Beldar | 15.12.1989 to 31.03.1995 | 01.04.1995 |
| 12. | Yagdatwa | Ram Niwas | Nala Beldar | 1989 to 31.03.1995 | 01.04.1995 |
| 13. | Surender Kumar | Ram Bilas | Beldar | 01.01.1992 to 31.03.1999 | 01.04.1999 |
| 14. | Param Shivam | Guru Nadan | Beldar | 15.09.1994 to 31.03.2003 | 01.04.2003 |
| 15. | Prabodh Chand | Yagdutt | Beldar | 16.08.1980 to 31.03.1988 | 01.04.1988 |
| 16. | Hira Singh | Agnu Ram | Beldar | 17.04.1993 to 31.03.2000 | 01.04.2000 |
| 17. | Bishandas | Karan singh | Beldar | 1999 to 31.03.2004 | 01.04.2004 |
| 18. | Surender Kumar | Mame Ram | Carpenter | 15.07.1986 to 31.03.1994 | 01.04.1994 |

| | | | | | |
|---|---|---|---|---|---|
| 19. | Ashok kumar | Mohan lal | Nala Beldar | January 2002 to 31.03.2066 | 01.04.2006 |
| 20. | Chanderpal | Late Mapu | Nala Beldar | 1997 to 31.03.2004 | 01.04.2004 |
| 21. | Rajesh kumar | Ram Singh | Nala Beldar | December 1997 to 31.03.2004 | 01.04.2004 |
| 22. | Suresh Chand | Shri Ram | Beldar | 15.03.1986 to 31.03.2004 | 01.04.2004 |
| 23. | Mahabir Prasad | Late Bhagwan Das | Beldar | 15.07.1995 to 31.03.2003 | 2003 |
| 24. | Dharambir Singh | Manohar Lal | Nala Beldar | December 1997 to 31.03.2004 | 01.04.2004 |
| 25. | Shivram | Somnath | Beldar | 15.10.1983 to 31.03.1989 | 01.04.1989 |

The reference is accordingly answered.

Dictated & Corrected by me.

17th August, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 6 अक्तूबर, 2022

**का.आ. 1037.**—राष्ट्रपति, श्री दिनेश कुमार सिंह को दिनांक 02 अक्टूबर, 2022 के पूर्वाह्न से 01 अक्टूबर, 2026 तक 4 वर्षो की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, तक के लिए केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, भुवनेश्वर में पीठासीन अधिकारी के पद पर नियुक्त करते है।

2. श्री दिनेश कुमार सिंह की पीठासीन अधिकारी, केंद्रीय सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय के पद पर नियुक्ति अधिकरण सुधार अधिनियम, 2021 और उसके तहत बने नियम यानि अधिकरण (सेवा की शर्तें) नियम, 2021 के अनुसार विनियमित की जाएगी।

[सं. अ-19011/10/2022-सीएलएस-II(ई)]

धनञ्जय शर्मा, अवर सचिव

New Delhi, the 6th October, 2022

**S.O. 1037.**—The President is pleased to appoint Sh. Dinesh Kumar Singh as Presiding Officer of Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar for a period of 4 years with effect from the forenoon of the 02nd October, 2022 up to 01st October, 2026 or until further orders, whichever is earlier.

2. The appointment of Sh. Dinesh Kumar Singh as Presiding Officer, CGIT-cum-LC shall be regulated in terms of the Tribunal Reforms Act, 2021 and the rules made thereunder, i.e. Tribunals (Conditions of Service) Rules, 2021.

[No. A-19011/10/2022-CLS-II(E)]

DHANANJAY SHARMA, Under Secy.

नई दिल्ली, 6 अक्तूबर, 2022

**का.आ. 1038.**—राष्ट्रपति, श्री लक्ष्मी नारायण जिन्दल को दिनांक 03 अक्टूबर, 2022 के पूर्वाह्न से 02 अक्तूबर, 2026 तक 4 वर्षो की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, तक के लिए केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय न. 2, मुंबई में पीठासीन अधिकारी के पद पर नियुक्त करते है।

2. श्री लक्ष्मी नारायण जिन्दल की पीठासीन अधिकारी, केंद्रीय सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय के पद पर नियुक्ति अधिकरण सुधार अधिनियम, 2021 और उसके तहत बने नियम यानि अधिकरण (सेवा की शर्तें) नियम, 2021 के अनुसार विनियमित की जाएगी।

[सं. अ-19011/09/2022-सीएलएस-II(ई)]

धनञ्जय शर्मा, अवर सचिव

New Delhi, the 6th October, 2022

**S.O. 1038.**—The President is pleased to appoint Sh. Laxmi Narain Jindal as Presiding Officer of Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai for a period of 4 years with effect from the forenoon of the 03rd October, 2022 up to 02nd October, 2026 or until further orders, whichever is earlier.

2. The appointment of Sh. Laxmi Narain Jindal as Presiding Officer, CGIT-cum-LC shall be regulated in terms of the Tribunal Reforms Act, 2021 and the rules made thereunder, i.e. Tribunals (Conditions of Service) Rules, 2021.

[No. A-19011/09/2022-CLS-II(E]

DHANANJAY SHARMA, Under Secy.

नई दिल्ली, 10 अक्तूबर, 2022

**का.आ. 1039.**—राष्ट्रपति, डॉ. शैलेन्द्र कुमार ठाकुर, पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय न. 2, धनबाद को दिनांक 02.10.2022 से छ: माह तक की अवधि अथवा नियमित आधार पर पद के भरे जाने तक अथवा अगले आदेश तक, जो भी पहले हो तब तक, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय न. 1, धनबाद के पीठासीन अधिकारी के पद का अतिरिक्त प्रभार सौपते है।

[सं. अ-11016/04/2021-सीएलएस.II(ई)]

धनञ्जय शर्मा, अवर सचिव

New Delhi, the 10th October, 2022

**S.O. 1039.**—The President is pleased to entrust the additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad to Dr. Shailendra Kumar Thakur, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad for a period of six months with effect from 02.10.2022 or till the post is filled on regular basis or until further orders, whichever is the earliest.

[No. A-11016/04/2021-CLS-II(E)]

DHANANJAY SHARMA, Under Secy.

नई दिल्ली, 17 अक्तूबर, 2022

**का.आ. 1040.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – *सह* – श्रम न्यायालय *आसनसोल* के पंचाट (संदर्भ संख्या 32/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2022 को प्राप्त हुआ था।

[सं. एल-22012/04/2017-आई.आर. (सीएम–2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 17th October, 2022

**S.O. 1040.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2018) of the Central Government Industrial Tribunal-cum-Labour Court Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 10.10/2022.

[No. L-22012/04/2017 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIALTRIBUNAL-CUM-LABOUR COURT, ASANSOL**

**PRESENT:** Shri Ananda Kumar Mukherjee, Presiding Officer
C.G.I.T-cum-L.C., Asansol

**REFERENCE NO. 32 OF 2018**

**PARTIES:**
Management of Madhusudanpur Colliery of ECL.

**Vs.**

Ajay Kumar Singh

**REPRESENTATIVES:**

For the Management : Mr. P. K. Das, Learned Advocate.

For the Union (Workmen) : Mr. Rakesh Kumar, President, Koyala Mazdoor Congress

**INDUSTRY :** Coal
**STATE :** West Bengal.

**DATED :** 26.09.2022

**AWARD**

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour, vide its Order **NO. L-22012/04/2017-IR(CM-II)** dated 08.11.2018 has been pleased to refer the following dispute between the employers, that is the Management of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

**SCHEDULE**

*"Whether the action of the Management of Madhusudanpur Colliery, Kajora Area, M/s. E.C.Ltd. by not paying the holiday wages in respect of their workman Shri Ajay Kumar Singh, Electrical Helper in spite of working on a holiday on 01/05/2016 is justified? If not, what relief the workman is entitled to?"*

**1.** After receipt of Order No. NO. L-22012/04/2017-IR(CM-II) dated 08.11.2018 of the aforesaid Reference framed by the Ministry of Labour, Govt. of India, New Delhi for adjudication of the dispute, a **Reference case No. 32 of 2018** was registered on 26.11.2018. Notices were issued to the parties under registered post, directing them to appear and file their written statements along with relevant documents and their respective list of witnesses they would rely upon.

**2.** Mr. P. K. Das, learned advocate appeared on behalf of ECL and filed his letter of authorization. On 04.09.2019 a letter dated 29.05.2019 which was issued by the Agent, Madhusudanpur Colliery, Kajora Area, ECL was placed with the record wherein it was stated that the matter in dispute has been mutually settled and there is no further dispute between the parties.

**3.** Having considered the submission made by Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, Union, representative of the workman and Mr. P. K. Das, learned advocate for the Management, it appears to me that the dispute between the parties referred herein above for adjudication has been settled and there is "No Dispute" between the parties over the issue. Accordingly, the case is closed and a **No Dispute Award** is passed.

Hence,

**ORDER**

That a **No Dispute Award** be passed in respect of the above Reference. Let copies of the Award be sent to the Ministry of Labour, Govt. of India, New Delhi for information and necessary action. The Reference is accordingly disposed of.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 19 अक्तूबर, 2022

**का.आ. 1041.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 175/95) को प्रकाशित करती है।

[सं. एल-41012/67/95-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 19th October, 2022

**S.O. 1041.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 175/95) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Railway and their workmen.

[No. L-41012/67/95– IR(B-1)]

A. K YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/175/95**

**Present:** P. K. Srivastava, H.J.S..( Retd)

Shri Preetam lal
Ex-Diesel Assistant
Block No.646/2, New Loco Colony,
South Eastern Railway,
Bilaspur(C.G.) ... Workman

**Versus**

The Divisional Railway Manager,
South Eastern Railway
Bilaspur(C.G.) ... Management

**AWARD**

**(Passed on 9-9-2022)**

As per letter dated 25/9/95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947(hereinafter referred to by the word `Act`, as per Notification No.L-41012/67/95-IR(B-1). The dispute under reference relates to:

> "***Whether the action of the management of S.E.Railway, Bilaspur in removing Shri Pritam lal S/o Dhanju, Diesel Assistant L/BSP w.e.f.28-4-1993 is justified? If not, to what relief the workman is entitled to and what should be the details?".***

1. After registering the case on the basis of reference, notices were sent to the parties. Respective parties have submitted their statement of claim/defence.

2. The case of the workman, as stated in his statement of claim, is that he was appointed on 24-7-1963 as Safaiwala in South Eastern Railway. He was promoted from time to time and ultimately in the year 1980, he was promoted to the post of Diesel Assistant on which he was working at the time of his removal by the Management of South Eastern Railway Calcutta(now Kolkata) in the year 1993, when he was working as a

Diesel Assistant and was posted in Bilaspur Division. He was served a charge sheet on 8-12-1992 with following three charges:-

**Charge No.1:-He failed to take preventive action to apply emergency brake to control the train(8477 UP) while his driver was approaching NRZB Station and overshoot starter signal at Dnager.**

**Charge No.2:-He was in possession of alcoholic drinks (country liquor)bottles while working in train no 8477 UP on 4-10-92.**

**Charge No.3:-He allowed unauthorized persons in his locomotive while working on 8477 UP on 4-10-1992.**

3. He denied the charges. The management appointed an Inquiry Officer to conduct the inquiry into the charges . The inquiry Officer conducted the inquiry and filed his Inquiry Report dated 6-3-1993 holding the workman guilty of the charges. A show cause notice dated 16-3-1993 was issued to him directing him to show cause with regard to punishment. He submitted his reply on 6-4-1993. The Disciplinary Authority passed the impugned sentence of his dismissal from service on 28-4-1993. His appeal against the punishment order filed on 19-12-1993 was dismissed by the Appellate Authority vide his order dated 8-2-1994. According to him, the inquiry was not conducted in accordance with the rules as provided in this respect in Railway Servants Discipline & Appeal Rules 1968 as no Presenting Officer was appointed during the inquiry.The Inquiry officer was himself the prosecutor also resulting into prejudice to the workman. This was also against the principle of natural justice and contrary to statutory rules as mentioned above. The Inquiry Officer wrongly held the charges proved against the workman, without considering the evidence on record. The Disciplinary Authority and the Appellate Authority also acted against law in accepting the finding of the inquiry and passing sentence disproportionate to the charges. The workman accordingly, prayed that holding the action of the management against law as illegal and arbitrary, the workman be held to be reinstated with all back wages.

4. The case of the Management as stated in its written statement of defence is that the Inquiry Officer conducted the Inquiry as per rules. There was no violation of any rules or any principle of natural justice during the inquiry. The workman was given full opportunity to defend him during the inquiry, hence finding of the Inquiry Officer regarding proof of the charges is in no way perverse, since the misconduct provided punishment of dismissal from service also the punishment of dismissal cannot be said to be arbitrary and dis-proportionate to the charges proved. Accordingly the Management requested that the reference be answered against the workman.

5. Two preliminary issues were framed by my learned Predecessor vide his order dated 6-1-2004 which are as follows:-

**(1) "Whether the Inquiry Officer conducted the proceedings in violation of Statutory Rules contemplated under the rules and it is in violation of principles of natural justice."**

**(2) Whether the finding of the Inquiry Officer is perverse.?"**

6. As it comes out from perusal of record that workman examined himself on oath in this case and was cross-examined. The management examined its witness Shri S.N.Prasad, M.G.Haldar , P.S.Parthae and J.N.Singh who were cross-examined by the workman side. The inquiry proceedings were also filed and proved in evidence which are on record.

7. On the basis of evidence on record, preliminary issue No.1&2 were answered by my learned Predecessor vide his order dated 10-10-2010. The Issue No.1 regarding legality of the departmental inquiry was answered against the management holding the departmental inquiry against law on the ground that by not appointing Presenting Officer, the Management violated the Railway Servants Discipline & Appeal Rules, 1968 and also acted against the principles of natural justice. Preliminary Issue No.2 was also answered against the Management holding the charges not proved against the workman even by evidence produced by management in support of the charges before this Tribunal.

8. As it comes out from perusal of the record, the management agitated against the aforesaid order of my learned Predecessor on Preliminary Issue No.1 by way of filing a writ petition No.8869/2011 before Hon'ble High court of M.P. at Jabalpur which was dismissed by a Single Bench of Hon'ble High Court vide its order dated 27-1-2017. A writ appeal against the order of writ court filed by Management was also dismissed by Division Bench of Hon. High court affirming the order of Single Bench of Hon'ble Writ Court. A special leave petition filed by the management before Hon'ble the Apex Court SLP(C ) No.3352/2017 and Civil Appeal No.3091/2022 which was disposed by Hon'ble the Apex court vide its order dated 22-4-2022, with the following directions to:-

.....

**(i) The Tribunal will endeavor to conclude the proceedings within six month of the communication of the order.**

**(ii) Since the findings in the order dated 8-10-2020 where on account of the preliminary issues, substantive findings having been rendered, the same have been sustained by the High Court, we direct that those findings are not to be taken into account in the final determination by the Labour court.**

**(iii) the same office should not take up the matter for further proceedings which in any case would arise from the fact that twelve years have elapsed and all issues to be decide afresh.**

9. In respect of this order of Hon'ble the Apex Court, mentioned above by this Tribunal, Preliminary issue No.1 regarding legality of the inquiry was not pressed by learned counsel for the workman, hence observed that there was no need to give any opportunity to the parties to lead evidence on the legality of the inquiry. Following issues remain to be considered in this case, they are:-

**(1)Whether the charges stood proved ?**

**(2)Whether the punishment is proportionate to the charge?"**

**(3)Whether the workman is entitled to any relief?"**

10. It was also observed that the charges were to be held proved on the basis of evidence in inquiry and before this Tribunal recorded earlier. Parties were given opportunity to lead evidence on the issue regarding proportionality of the punishment and relief. The workman filed his affidavit and certified copy of inquiry proceedings against the driver of the Train G.Daddle and proved by the Management in the reference case No.R.74/1997 proceeded between the driver and the Management with respect to the same incident and award of this Tribunal passed in that reference case with respect to the driver aforesaid. No evidence was filed by the management.

11. I have heard arguments of Mr. Pranay Choubey, learned counsel for the Workman and Shri R.K.Soni, learned counsel for the Management. Learned counsel for the workman has filed written argument also . I have gone through the written argument and record.

**12. <u>ISSUE NO.1:-</u>**

**"Whether the charges stand approved"**

Charges in the case in hand has been detailed earlier. Perusal of inquiry report and inquiry proceedings makes it clear that no Presenting Officer was appointed for presenting the case of Management during the inquiry and the witness during inquiry were examined by the Inquiry Officer himself. Rule 9(c )(12) & (17) of Railway Servants Discipline & Appeal Rules 1968 have been referred by learned counsel for workman which makes its clear if the Disciplinary Authority does not decide to proceed with the inquiry, he is under obligation to appoint the Inquiry Office and Presenting office. These Rules are framed under Article 309 of Constitution of India in delegated capacity by the Management. Since the Inquiry Officer exercised the powers of the Presenting Officer also i.e. he acted as a Judge and Prosecutor both. There is an institutional bias apparent in the inquiry which definitely prejudiced the defence of the workman.

13. Even if this point be ignored and we go through the Inquiry papers, there is statement of Mr. P.S.Parthae, Guard who deposed during the inquiry that he was the guard of the train on the date of incident. The train left the station B.R.S. at 1902 hours and passed though N.R.Z.B. situated at 1912 hours which had scheduled halt by over shooting the departure signal and finally stopped after advance starter at 1914 hours. His SLR was standing in front west cabin. The Train was then brought back to railway station at 1930 hours.. He also stated that the workman was Assistant Driver/Diesel Assistant in the said Train G.Daddle was the driver. The present workman was smelling alcohol but his behavior was normal. His this statement is supported by other witnesses, J.N.Singh ,Senior M.I./ULRS.N.Prasad (Assistant Guard), B.S.Parthae(Guard), B.B.Rai(Head Constable RPF).

14. Even if the statement of inquiry witnesses mentioned above doing the inquiry are ignored assuming the inquiry proceeding is not initiated under law. There is on record statement of management witness S.N.Prasad (Assistant Guard), N.C.Haldar, P.S.Pathre(Guard) and J.N.Singh Senior MI recorded before this Tribunal by Management.

15. It comes out from perusal of the records and statements as mentioned above that it was the job of the Driver to maintain the speed and stop train on mandated stoppages. Train over shoot and passed the outer signal at the railway station, had the train been in normal speed and if proper brakes have been applied by the crew

assessing the whole condition , the train would not have overshoot and crossed signal. There is an emergency brake also in the Engine and it is duty of the Diesel Assistant /Assistant Driver to apply the emergency brake, if normal brake do not work efficiently at that time. Had the workman applied the emergency brake within the time and with adequate strength, the train could not over shoot the signal.There is negligence established on the part of the driver and also on the part of the present workman Assistant Driver is established. There is a maxim in law **res ipso loquitor** which means sometimes things speak for themselves. This maxim fully applies in case in hand on Charge No.1, hence from the evidence conducted during the inquiry as well as from the evidence recorded before this Tribunal also, **Charge No.1 is held proved**.

16. As regards **charge No.2 with regard to possession of country liquor** with the workman, it comes out from perusal of the record, particularly the certified inquiry papers against the driver filed by the workman side in the case in hand that the same charge was framed against the driver. It has come out from the evidence during the inquiry,in the case in hand and in the inquiry against the driver as well as the statements of management witness examined before this Tribunal that the liquor bottle was recovered from the bag of driver and not of the present workman who was Assistant Driver. Hence this fact is **held not proved against the workman.**

17. As regards, **charge No.3 regarding allowing unauthorized person to travel in the Engine cabin by the Assistant Driver,** though he has denied the charges during the inquiry and in his statement before this Tribunal, but there is evidence during the inquiry in the form of statement of witness and before this Tribunal also who have stated that the persons found in the Engine cabin were the relative and family members of the Assistant Driver, hence this inference can be safely drawn that it is he who permitted them to travel in the Engine, hence this **Charge No.3 is held proved against the present workman.**

**18. Hence Issue No.1 is answered accordingly on the basis of above discussion.**

**19. The most striking fact in this case is that there was medical evidence in the form of medical examination of the workman to show that he was drunk at that time but this charge was never framed against the workman by the authorities.**

**20. ISSUE NO.2 AND 3:-**

Since both these issues are interrelated, they are being taken together.

The workman has been awarded punishment of removal from service. The service rules as mentioned above provide punishment of removal from service in case of such a misconduct as mentioned in Charge No.1 proved. Learned counsel for workman has sought parity in this regard with the punishment awarded to the Driver G.Daddle by this Tribunal i.e. by my learned Predecessor in the Award passed in Case No. CGIT/LC/R/74/1997, certified copy of which is on record. The same charges were pressed against the driver also and were held proved by my learned Predecessor in that case. The punishment of removal of the Driver was found disproportionate to the charge and was reduced to withholding of three increments. The driver was directed to be reinstated with continuity of service but without back wages. Though learned Counsel for Management has vehemently opposed this submission with an argument that such parity cannot be given and writ petition is pending against the Award before Hon'ble High Court, but I am not inclined to accept this argument.

21. Accordingly, giving parity, the present workman is also held liable for punishment of withholding his three increments and is entitled to be reinstated with all service benefits except back wages holding the punishment disproportionate to the charge. **Issue No.2 and Issue No.3 is decided accordingly.**

22. On the basis of the above discussion, following award is passed:-

**A. The action of the of S.E.Railway, Bilaspur in removing Shri Pritam lal S/o Dhanju, Diesel Assistant L/BSP w.e.f.28-4-1993 held to be not just and proper.**

**B. The workman is held entitled to be reinstated with all service and post retirral benefits except back wages.**

**C. Parties to bear their own cost.**

23. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 9.9.2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 अक्तूबर, 2022

**का.आ. 1042.**—औद्योगिक विवाद अधिनियम, 1947 (1947 1947) का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 184/1998) को प्रकाशित करती है।

[सं. एल-12012/325/97-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 19th October, 2022

**S.O. 1042.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 184/1998) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/325/97– IR(B-1)]

A. K YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/184/1998**

**Present:** P. K. Srivastava, H.J.S..( Retd)

Shri Paras Saklecha,
19,Shanti Nagar
Ratlam-457001. ... Workman

**Versus**

The Chief General Manager,
State Bank of India,
Local Head Office,
Hoshangabad, Bhopal (462001) ... Management

**AWARD**

**(Passed on 26-8-2022)**

As per letter dated 10/8/1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/325/97-IR(B-1) The dispute under reference relates to:

> "***Whether the action of the management of Chief General Manager, State Bank of India in terminating the services of Shri Paras Saklecha w.e.f. 7/8/96 is justified? If not, to what relief the workman is entitled for? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. In his statement of claim the workman has pleaded about numerous correspondence w.e.t. non-payment of certain allowances. But charge sheet was issued to him for absence from duty. The absence for duty was for 573 days. It was noticed that there was inconsistency about number of days or his absence-674 days. Workman had further correspondence with the management but no reply was found. Workman had submitted reply to the charge sheet denying charge sheet against him. Enquiry Officer and Presenting Officer were appointed. Enquiry was conducted without Defense Assistant, Gandhi retired, he was not allowed another Defense Assistant. Documents and list of witnesses were not supplied to him. In para-40 workman has pleaded that inquiry is vitiated as he was not given proper opportunity for his defense. Enquiry was conducted in absence of Defense Assistant. Enquiry Officer was biased. He was unable to properly defend him as he was not paid pay and allowance for the period 1994 to February-1996. Show cause notice was issued with prejudice mind. Reply was given by him dated 22-3-5 was not considered. That he was not supplied copy as per letter dated 1-2-6. Enquiry was conducted in violation of principles of natural justice. The documents produced by Presenting Officer were not proved. First party workman was not allowed opportunity to cross examine the witnesses. Enquiry was illegally proceeded ex-parte. Enquiry Officer did not disclose his educational qualification. Workman was not allowed to be represented by legal Practioner. Charge sheet was issued on bogus documents.

3. The management has in its written statement reiterated that the workman was a habitual unauthorized absentee. He was negligent in his duties. He was not performing his duties. The workman was not responding to memo issued by him. He was not complying instructions. Charges sheet was issued to workman. Regular inquiry was conducted against him. Workman was allowed to defend through Defense Representative as permissible under rule. Workman was not allowed Advocate for his defense. It is reiterated that Inquiry Proceedings were held on various dates, details given in para-2 of the written statement. Workman was given full opportunity for his defense, Workman was held guilty of the charges by the Inquiry Officer. That proper inquiry was conducted against workman. Workman deliberately failed to obtain copies of documents. Workman was not amenable to discipline.

4. The workman filed rejoinder reiterating his contentions in statement of claim. Workman had filed affidavit of his evidence supporting his contentions in statement of claim. In his cross-examination, the workman says he received charge sheet, he had given reply after 15-2 days , his Defense Assistant had attended Inquiry Proceedings. After retirement of his Defense Assistant, Enquiry Officer stopped Defense Assistant from participating in the inquiry. Workman was directed to produce other Defense Assistant to which the workman did not agree, Workman had claimed that he would defend himself. The day on which the Defense Assistant had retired, inquiry was closed. He had complained about said incident though the workman claimed that he produced copy of his complaint. Document has been admitted by management. The workman admitted documents M-8 to M-14. Workman claimed that he was not allowed opportunity by Inquiry Officer to produce documents in support of his defense.

5. The management produced documents Exhibit M-1 to M-22. Copy of Inquiry proceedings produced at M-22. On careful perusal of Inquiry proceedings Exhibit M-22, it is apparent that in Inquiry Proceedings dated 30-8-99, next date of inquiry was fixed 15-9-99. The inquiry proceedings dated 15-9-99 is not produced. On Enquiry proceeding dated 29-9-99, next date of inquiry was fixed on 8-10-99. Enquiry proceeding dated 8-10-99 is not found in Exhibit M-22. Enquiry was conducted on 15-10-99. Inquiry Proceedings dated 15-10-99 shows that delinquent workman was not present. Inquiry Proceedings was attended by K.V.Iyer , Shri B.K.Chatterjee only. Enquiry was proceeded ex-parte. Statement of Presenting Officer was recorded w.e.t. charge No.1 to 3. Without recording any statement of any witnesses, the documents pertaining to charge were referred by Inquiry Officer in his statement. From whose evidence, documents PX-1 to 5 were proved and admitted in evidence is not appearing from the record of Inquiry Proceedings. It is clear that Enquiry Officer has not followed proper procedure without recording statement of any witnesses of the Management, inquiry was closed. Only on questions asked by Inquiry Officer on how charges are proved were replied by the Presenting Officer. Enquiry was closed. Enquiry Officer submitted his finding that charges were proved, inqury is not properly conducted. The documents referred by Presenting Officer in reply to question by Enquiry Officer are also not produced. It is suffice to say that Inquiry is not properly conducted. Workman was not given opportunity to cross-examine any of the witnesses relating to the documentary evidence. Therefore, I record my finding on the above issue in Negative.

6. Management filed affidavit of evidence of Shri Chandrasen Pandit. Witness of management was deferred. Witness was not cross-examined thereafter. Documents of inquiry are produced at M-1 to M-14. Statements of the witnesses of management are recorded. Charges alleged against workman pertain to unauthorized absence from duty. Workman had participated in Inquiry Proceedings. Documents on inquiry proceeding does not show that workman was denied opportunity for his defense.

7. Preliminary Issue was framed by my learned Predecessor as follows:-

**"Whether the departmental inquiry conducted against the workman is just and proper.?"**

8. On the basis of evidence on record, this issue was answered by my learned Predecessor vide his order dated 12-6-2017, holding the departmental inquiry just and proper. His this order is part of this Award.

9. Following Additional Issues were also framed by my learned Predecessor vide his order dated 12-6-2017:-

**(1) Whether the punishment of dismissal imposed against the workman is legal and proper?**

**(2) Whether the punishment of dismissal imposed against the workman is legal and proper?**

**(3) If so, to what relief the workman is entitled?**

10. The workman filed his affidavit on these issues and was cross-examined by the Management.

11. The Management did not prefer any evidence on these issues.

12. The workman did not appear at the time of arguments, hence argument of learned counsel for the management Mr. Ashish Shroti were heard by me. The workman was given opportunity to file written argument which he did not avail.

**13. ISSUE NO.1:-**

Following charges were framed against the workman, which are as follows:-

**(1) Willfully absented himself unauthorizedly without any leave getting sanctioned in a habitual manner.**

**(2) When he attended office, he did not discharge duties allotted in the Office by his superior officers.**

**(3) He established an organization named "Yuvam" without the formal permission from Bank.**

**(4) He did not respond to various memo issued by the management.**

**(5) He obtained a new loan for purchase of scooter n the condition that he will produce the registration certificates and other documents of the said scooter purchased from favour of loan he obtained for the purpose of hypothecation with the bank against the loan amount. He did not comply with this condition.**

**(5) Hence, according to the management, he committed serious misconduct and minor misconduct as mentioned in the Desai Award para 18.20 and 521 4E and 4J read with 6A,B,C & D**

14. On perusal of the inquiry papers proved by the management it shows that the workman denied the charges. There is on record attendance sheet relating to the workman regarding different dates he was absent during the inquiry proceedings which show that the workman absented himself regularly within the period 17-6-198 to 28-6-1990 his total absence was for 196 days. For the period between 16-9-1992 to 2-11-1994, his total absence was for 667 days. There is evidence produced before the inquiry proceedings wherein it has been mentioned that on more than 10 dates the workman come into bank made a signature and left the office. During inquiry it also came out that on different dates, he was allotted different duties which he refused to do and left the office without information and without getting any leave sanctioned. The charge of leaving the organization without the formal permission, the workman himself admitted this fact that he established this organization. Also that he imparted coaching to the unemployed youth for appearing in various bank examination through this organization. There is nothing on record that he had obtained any formal permission for this. Similarly Inquiry papers also establish that he did not comply with the conditions of the vehicle loan which he received from the Bank. Hence in the light of this evidence collected, during the inquiry, the finding of the Inquiry Officer and the Disciplinary Authority that the charges are proved against the workman, cannot be said to be perverse. The workman is held guilty for the charges. Accordingly issue no.1 is answered accordingly.

**15. ISSUE NO.2:-**

Before proceeding, the settled preposition of law on the issue requires to be mentioned, which is as follows:-

It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh.

1. Hon'ble Apex Court in ***B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

***"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."***

2. In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

***Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their***

***sensitiveness, exactness expected of an discipline required to be maintained, and the department /establishment which the delinquent person concerned works."***

3. In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

***The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.***

***To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.***"

4. In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

***"..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."***

5. In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

***"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.***

6. Hon'ble Apex Court in *Administrator,* ***Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that :

***"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.***

7. **Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721** has observed that:

***It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.***

16. The charges proved are of serious misconduct which establish that the workman was not in fact discharging his duties. This is also established, that he has been a habitual absentee. It has also come in evidence that he contested election and was elected as Member of Legislative Assembly and also he became Mayor of the Ratlam Corporation. In these circumstances, the punishment of his dismissal from service is held to be proportionate to the charges. **Issue No.2 is answered accordingly.**

**17. ISSUE NO.3:-**

In the light of finding recorded above, the workman is held entitled to no relief. **Issue No.3 is answered accordingly**.

18. On the basis of the above discussion, following award is passed:-

**A. The action of the management of Chief General Manager, State Bank of India in terminating the services of Shri Paras Saklecha w.e.f. 7/8/96 is held to be just and proper.**

**B. The workman is held entitled to no relief.**

19. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 26.8.2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2022

**का.आ. 1043.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार छत्तीसगढ ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 27/1997) को प्रकाशित करती है।

[सं. एल-12012/255/95-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 26th October, 2022

**S.O. 1043.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/1997) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Chhattisgarh Gramin Bank and their workmen.

[No. L-12012/255/95– IR(B-1)]

A. K YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/27/1997**

**Present:** P. K. Srivastava, H.J.S..( Retd)

The Chairman
Chhattisgarh shetriya Gramen Banak
Karmachari Sangh,
Branch Dayalband,
BilaspurC.G.) ... Workman

**Versus**

The Chairman,
Name changed to
Chhattisgarh Gramen Bank
Pradhan Karyalaya
Dayalband,Bilaspur(C.G.) ... Management

**AWARD**
**(Passed on 12-9-2022)**

As per letter dated 29-1-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/255/95-IR(B-1). The dispute under reference relates to:

"Whether the action of the management of Bilaspur Raipur Shetriya Gramen Bank , Branch Dhurkot in terminating service of Shri Hira Lal Sahu, Ex-Messenger w.e.f. 1-3-94 is justified?if not to what relief the workman is entitled to?" .

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties appeared and filed their respective statement of claim/defence.

2. The case of the workman as stated in his statement of claim is that he was appointed as a Messenger in Dhurkot Branch of the then Bilaspur Raipur Shetriye Gramin Bank in the year 1989-1990 i.e. from 3-1-1991 and worked continuously till 28-12-1994 when his services were terminated without any notice or compensation which is in violation of Section 25F of the Industrial Disputes Act,1947. According to the workman by working continuously in the Bank, he had acquired regular status which was denied to him. This is also against law. Accordingly the workman, he has prayed that setting aside his termination, he be entitled to be reinstated with all back wages and benefits.

3. The case of the Management in brief is that the workman was a daily wager who was engaged on local basis as and when required for which he was paid. He was not appointed as per Rules following recruitment procedure against any sanctioned vacancy. He never worked continuously for 240 days in any year, hence his dis-engagement is not in violation of Industrial Disputes Act,1947. Accordingly the Management has prayed that the reference be answered against the workman.

4. This is also in the pleadings of the parties that the then Management has been taken over by another Management and the Bank is now named and working as Chattisgarh Gramin Bank.

5. In evidence, the workman has filed his affidavit. He has been cross-examined by Management. He has admitted payment voucher filed by Management which are marked as Exhibit M-1 collectively.

6. The Management has examined its witness Sumit R.Tirke, Branch management who has been cross-examined.

7. I have heard arguments of learned counsel for workman Mr. Aditya Singh and Mr. A.K.Shashi, learned counsel for the Management and have gone through the record.

**8. <u>The Reference itself is the issue in dispute, in the case in hand.</u>**

The admitted position between the parties is that the workman was engaged as a daily wager. Parties differ on the point whether the workman continued in service for 240 days in any year or not? Both the side witness have corroborated their case as stated in their pleadings on this point. The workman has stated on this point that he continued with his job for which he was paid in different names. According to the management, different daily wagers were engaged for the purpose of cleaning in the Branch in different period, details as mentioned in the Affidavit of Management witness. The management has filed a certified copy regarding statement of daily wages paid to daily rated workers in the Branch within the period of 3-6-1991 to 28-12-1994. It goes to show that Damrudhar Sahu, Hiralal Sahu, Rajkumar Sahu, Rohit Kumar Sahu and Liladhar Jaiswal and many others mentioned in the list were engaged for different period of time during this period. The present workman Hiralal Sahu was engaged from 25-2-1991 to 18-5-1991 for 69 days. Thereafter from 1-6-1992 to 31-7-1992 for 51 days, then from 1-8-1992 to 29-8-1992 for 23 days and lastly from 1-6-1994 to 20-8-1994 for 69 days and from 1-9-1993 to 27-11-1993 for 72 days. Respective payment vouchers have been filed in this respect. The workman himself states that he was paid wages in different names . If it was so, the workman was also a party to fabrication of record by Bank Officials who received payment in different names. Though this fact has been denied by management , hence a self-serving statement of workman on oath cannot be held sufficient to prove his continuous engagement for 240 days or more in any year. Hence his disengagement without notice or compensation is also held not in violation of law. Accordingly, the workman is held entitled to no benefit.

10. On the basis of the above discussion, following award is passed:-

A. The action of the management of Bilaspur Raipur Shetriya Gramen Bank , Branch Dhurkot in terminating service of Shri Hira Lal Sahu, Ex-Messenger w.e.f. 1-3-94 is held to be justified.

B. The workman is held entitled to no relief.

C. Parties to bear their own costs.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 12.9.2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2022

**का.आ. 1044.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक, मेसर्स मॉडल सिक्यूरिटी फोर्स प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 मुम्बई के पंचाट (संदर्भ संख्या 23/2019) को प्रकाशित करती है।

[सं. एल-12011/30/2019-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 26th October, 2022

**S.O. 1044.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India , M/s Model Security force and their workmen.

[No. L-12011/30/2019– IR(B-1)]

A. K.YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI**

**Present :** Smt. Pranita Mohanty, Presiding Officer

**REFERENCE NO.CGIT-1/23 OF 2019**

**Parties:** Employers in relation to the management of

1. Reserve Bank of India
2. M/s. Model Security Force

**AND**

**Their workmen**

**Appearances:**

| | | |
|---|---|---|
| For the first party No.1 Management | : | Absent. |
| For the second party workman | : | Absent. |
| State | : | Maharashtra |

Mumbai, dated the 09th day of September, 2022

**AWARD**

1. The present reference has been made by the Central Government by its order dated 09.12.2019 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

> ``Whether the demand of All India Reserve Bank Contract Workers' Federation, Mumbai that whenever, the contractor is changed, the services of the existing 36 ( As per annx.II) Contract workers should not be terminated or discontinued, but should be continued with the same service conditions is justified? If not, to what relief the Union/Contract workers are entitled to?''

2. By the order dated 10.10.2019, notices were directed to be issued to the parties. Accordingly, notices were issued to the parties by Registered Post AD.

3. On 15.11.2019, Representatives of both the parties were present. The representative for the Union prayed for time to file Statement of Claim. And the matter was adjourned to 06.2.2020.

4. On 06.2.2020, Mr.R.K.Patil, Representative for the management was present but none was present on behalf of the second party workman to file the statement of claim.

5. Perusal of the record reveals that both the parties are absent before this Tribunal till date.

6. The case is taken up today. Both the parties are absent.

7. No Statement of Claim has been filed on behalf of the second party / Union.

8. From the above narration of facts, it is evident that despite repeated dates having been fixed, both the parties were absent. No Statement of Claim has been filed on behalf of the second party / Union. There is thus, no pleading or evidence filed on behalf of the second party / Union in support of its claim as contained in the Reference made to this Tribunal. No relief, therefore, can be granted to the second party / Union.

9. Reference is consequently answered by stating that no relief can be granted to the second party / Union.

10. Award is passed accordingly.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2022

**का.आ. 1045.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसबीआई लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 मुम्बई के पंचाट (संदर्भ संख्या 27/2018) को प्रकाशित करती है।

[सं. एल-12012/02/2018-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 26th October, 2022

**S.O. 1045.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the industrial dispute between the management of SBI Life Insurance Co. Ltd. and their workmen.

[No. L-12012/02/2018– IR(B-1)]

A. K. YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI**

**Present :** Smt. Pranita Mohanty, Presiding Officer

**REFERENCE NO.CGIT-1/27 OF 2018**

**Parties:** Employers in relation to the management of SBI Life Insurance Co. Ltd.

**AND**

**Their workmen**

**Appearances:**

For the first party no.1 Management : Absent

For the second party workman : Absent

State : Maharashtra

Mumbai, dated the 05th day of September, 2022

**AWARD**

1. The present reference has been made by the Central Government by its order dated 19.11.2018 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

1) Whether Ms. Amruta Aklujkar is a workman in the definition of ID Act?

2) Whether the enquiry conducted against her was vitiated?

3) Whether the action of the Management of M/s SBI Life Insurance Co. Ltd.,Mumbai, in terminating the services of Ms. Amruta Aklujkar w.e.f. 12.09.2016 after imposing penalty on her is legal and justified? If so, what relief the workman is entitled to?

2. By the order dated 31.12.2018, notices were directed to be issued to the parties. Accordingly, notices were issued to the parties by Registered Post AD.

3. Notice sent to the workman was received back with the postal remark "Left'. However, when the matter was taken up on 14.2.2019, which was the date fixed in the notice, Ms. Deepika Kackar, Adv was present on behalf of the management and filed Letter of authority and none was present on behalf of the second party workman.

4. In the circumstance, by the order dated 14.2.2019, the case was adjourned to 26.4.2019, for filing Statement of Claim on behalf of the second party workman.

5. Perusal of the record reveals that neither the workman nor her authorized representative was present before this Tribunal to file Statement of Claim till date.

6. The case is taken up today. Both parties are absent.

7. No Statement of Claim has been filed on behalf of the second party / Union.

8. From the above narration of facts, it is evident that despite repeated dates having been fixed, none has appeared on behalf of the second party/Union. No Statement of Claim has been filed on behalf of the second party / Union. There is thus, no pleading or evidence filed on behalf of the second party / Union in support of its claim as contained in the Reference made to this Tribunal. No relief, therefore, can be granted to the second party / Union.

9. Reference is consequently answered by stating that no relief can be granted to the second party / Union.

10. Award is passed accordingly.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2022

**का.आ. 1046.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एक्सिस बैंक एंड सिक्योरिटी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों **और** उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 28/2001) को प्रकाशित करती है।

[सं. एल-12012/01/2021-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 26th October, 2022

**S.O. 1046.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Axis Bank & Security Ltd. and their workmen.

[No. L-12012/01/2021– IR(B-1)]

A. K. YADAV, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT LUCKNOW**

**PRESENT :** SOMA SHEKHAR JENA, HJS (Retd.)

**I.D. No. 28/2001**

**BETWEEN :**

Renu Sharma W/o Shri Susheel Kumar Sharma
R/o B5/407, Fourth Floor, Nandini Enclave, Phase-3, Avadh Vihar Yojna, Lucknow.

**AND**

1. The Managing Director & CEO
   Axis Bank & Securities Ltd., Axis House
   C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

2. The HR Head, Axis Bank & Securities Ltd., Axis House
   C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

3. The Vice President, HR, Axis Bank & Securities Ltd., Axis House
C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

4. The JGM (Legal and compliance), Axis Bank & Securities Ltd., Axis House
C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

**AWARD**

1. The present Award arises out of complaint filed by the workman-lady, Smt. Renu Sharma W-10, under Section 33 A of the Industrial Disputes Act, 1947 for alleged contravention of the provisions contained in the Section 33 of the Industrial Disputes Act, 1947 by the opposite parties.

2. The case of the complainant, Renu Sharma, in brief, is that she had been appointed through offer/appointment letter dated 03.11.2011 in Retail Sales Vertical & Delivering in Branch of the opposite parties and since then had been working as such with utmost satisfaction of the opposite parties. It has been alleged by the workman-lady that in order to harass the workman, the Company reallocated her work to a different field altogether in Lucknow office of the opposite parties, without adhering to the guidelines by the respondent Company as well as without sending a notice to the workman-lady in the prescribed format, in violation to the provisions of the Industrial Disputes Act, 1947. The workman-lady has also alleged that she had been given job offer by a third party i.e. IKYA Human Capital Solution at the instance of the opposite party on 31.12.2019 and the workman-lady was given a conditional offer either to join the said third party Company or joining such other job profile as the management of the opposite party was offering. It has further been alleged by the workman that all her requests in this regard were of no use and she was terminated w.e.f. 02.03.2021 without any prior notice or opportunity of hearing in violation to the principles of natural justice and provisions contained in Section 33 (1) and 33(2) of the Act. The complainant has alleged that she was not paid any salary from January, 2021 despite the fact that the case was pending adjudication and was sub-judice before the conciliation officer. Accordingly, the complainant has prayed that respondents may be directed to revoke the termination of the complainant and she may be reinstated with consequential benefits, including back wages.

3. The management has filed its objection dated 15.07.2022; wherein it has vehemently opposed the submissions of the workman, it has submitted that the jurisdiction of the Industrial Tribunal stands confined to the reference, referred to it only and it cannot travel beyond the schedule of reference. It has also been submitted by the management that the workman has sought relief for revocation of her termination dated 02.03.2021 along-with reinstatement and payment of five pending promotions and Grade Pay, whereas no such dispute of termination has been referred for adjudication by the Central Government to this Tribunal, as such, the relief prayed by the workman-lady is beyond the scope of reference order. The management has also submitted that the workman has not filed any statement of claim with reference to the reference order; and accordingly reserves right to file its written statement in reply to the statement of claim filed by the workman. The management has categorically submitted that provisions of Section 33 attract only when there is any industrial dispute pending before Conciliation Board, Labour Court, Tribunal, National Tribunal or Arbitrator; but from the subject matter of the reference order it is evident that the matter referred relates with alleged re-designation of the workman-lady, Renu Sharma, who is an individual person, as such, the dispute is an individual dispute as the same has not affected the entire industrial atmosphere of the industry. The management has further submitted that the present industrial dispute has not been espoused by any Union or Federation or body of the workmen, therefore, the individual dispute of workman-lady, Renu Sharma does not transform into an industrial dispute; and since no industrial dispute is pending before this Tribunal therefore, instant application for workman is not maintainable under Section 33 A of the Industrial Disputes Act, 1947; and accordingly, the present application is liable to be dismissed being devoid of any merit.

4. Hon'ble Allabahad High Court, Lucknow Bench vide its order dated 09.04.2022 in Writ Petition Matters under Article 227 No. 1174 of 2022 has directed as follows:

> *"(4) This petition is finally disposed of with a direction to the Opposite party no.1 to decide the application of the petitioner filed under Section 33-A of the Industrial Disputes Act at the earliest either on the next date fixed or within three months thereafter."*

5. Heard oral submissions of both the parties at length and perused material available on record.

6. The workman vehemently submitted that the management in utter contravention to the provisions of the Section 33 of the Act, has terminated her services vide termination order dated 02.03.2021 during pendency of the present industrial dispute before this Tribunal.

7. In rebuttal, the case of the management is raised question over validity of the reference order, with submission that the matter referred to this Tribunal relates to re-designation of the workman, therefore, the same could not be raised in individual capacity; rather the same should have been espoused by some Union or body of workmen; therefore, reference order under adjudication is not maintainable. As regards contravention of provisions of Section 33 of the Act, the management has come with a case that the violation of the provisions of Section 33 of the Act is attracted only when there is pendency of any dispute before Conciliation Board, Labour Court, Tribunal, National Tribunal or Arbitrator; but in present case, there was no pendency before this Tribunal, since the reference order is not maintainable, being not raised by a Union, therefore, the present application u/s 33A of Act is not maintainable as well. The learned counsel for the management has also stated that the so called application, W-10, for alleged violation of section 33 of the Act is neither verified nor is supported with any affidavit, therefore, the same is not required to be considered by this Tribunal being defective and is liable to be rejected on technical grounds. He has relied upon:

*(i)* *2015 (144) FLR 830 Supreme Court: Oshiar Prasad & ors. Vs. Management of Sudamadih Coal Washery of M/s BCCL, Dhanbad.*

*(ii)* *2013 LLR 1157: Supreme Court: Tata Iron & Steel Co. Ltd. vs. State of Jharkhand & Ors.*

*(iii)* *2007 LLR 1233: Supreme Court: Karan Singh vs Executive Engineer, Hariyana State Marketing Board.*

8. Section 33 A of the Industrial Disputes Act, 1947 provides provision for adjudication of a matter for alleged alteration in the service conditions of an employee by the employer during pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal. The said section of the Act is quoted hereunder:

***33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.*** *– Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, -*

*(a)* *to such conciliation officer or Board, and the conciliation officer or Board shall take such compliant into account in mediating in, and promoting the settlement of, such industrial dispute; and*

*(b)* *to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such compliant, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the compliant as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly*

A bare reading of above provision makes it crystal clear that where an employer contravenes the provisions of Section 33 i.e. alters the service condition in respect of any workman, which is prejudicial to him, during pendency of any proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal then such a workman, aggrieved by such contravention, may make a compliant in writing, to the forum before which the proceedings are pending. The provisions contained in Section 33 of the Act is as under:

***33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.*** *– (1) During the pendency of any conciliation proceeding before a*

*conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, -*

*(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or*

*(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,*

*Save with the express permission in writing of the authority before which the proceeding is pending.*

On perusal of the above noted section, it becomes apparent that it relates to the change in the service condition of an employee by the employer during pendency of any proceedings before a conciliation officer, Board, an arbitrator, Labour, Court, Tribunal or National Tribunal and in the event of such contravention the aggrieved employee may make a complaint in writing to the authority before whom such proceedings are pending. The management has disputed the validity of the present complaint u/s 11-A on the ground that since the reference pertains to the re-designation of the workman, therefore, the same could not be raised in individual capacity; rather the same could be espoused by some Union or body of workmen; therefore, reference order is not maintainable and violation of the provisions of Section 33 of the Act is attracted only when there is pendency of any dispute before Conciliation Board, Labour Court, Tribunal, National Tribunal or Arbitrator; but in present case, there was no pendency before this Tribunal since the reference order is not maintainable, being not raised by a Union, therefore, the present application u/s 33A of Act is not maintainable. In this regard it is noteworthy to mention here that though the original reference was not espoused by a Union, making it non-maintainable; but as soon as the services of the workman-lady were terminated the reference becomes maintainable; hence present application/compliant u/s 33-A of the Act is maintainable. From perusal of the termination letter dated 02.03.2021, it is evident that the complainant had been terminated w.e.f. 02.03.2021; and the reference was made to this Tribunal vide order No. L-12012/01/2021/-IR(B-I) dated 15.02.2021 by the Appropriate Government, therefore, there was clear violation of provisions contained in Section 33 of the Act.

9. The allegations made by the complainant can be well appreciated at the time of final hearing of the industrial dispute and prayer made by her can be considered in light thereto while disposal of the industrial dispute referred to this Tribunal for adjudication. Also, there is no evidence available on record that the complainant is gainfully employed somewhere; accordingly, in view of the discussions made hereinabove, the complainant/workman Renu Sharma is entitled for monthly compensation of Rs. 3000/- (Rupees Three Thousand only) for alleged contravention of provisions of Section 33 of the Act, during pendency of the industrial dispute referred to this Tribunal for adjudication. In the event the applicant plays dilatory tactic for prolonging the proceeding, the opposite party management is at liberty to move application for cancellation of the interim maintenance.

10. Award as above.

Let two copies of this award be sent to the Ministry for publication in terms of provisions u/s 33A (b) of the Industrial Disputes Act, 1947.

LUCKNOW

05th August, 2022

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1047.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स द कैथोलिक सीरियन बैंक के प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम_के पंचाट संदर्भ संख्या (38/2013) को प्रकाशित करती है।

[सं. एल -12011/52/2013- आई आर (बी.1)]

ए.के. यादव, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1047.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.38/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam* as shown in the Annexure, in the industrial dispute between the management of M/s.The Catholic Syrian Bank and their workmen.

[No. L-12011/52/2013– IR(B-1)]

A. K YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULAM**

**Present:** Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Friday the 27th day of May 2022, 6 Jyaistha 1944)

ID No. 38/2013

Workman/Union : The General Secretary
Catholic Syrian Bank Staff Association
AIBEA House
Kalliath Royale Square
Palace Road
Thrissur - 680020
By M/s.ANP Associates

Management : The Managing Director & CEO
M/s.The Catholic Syrian Bank
Head Office
Thrissur - 680020
By M/s.B. S. Krishna Associates

This case coming up for final hearing on 22.01.2020 and 05.11.2021 and this Industrial Tribunal-cum-Labour Court on 27.05.2022 passed the following:

**AWARD**

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/52/2013-IR(B-I) dated 24.07.2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

" Whether the action of the Management of Catholic Syrian Bank in denying the eligible higher special pay to those who are discharging the duty of head casher-II quoting the reasons that the designation of those who are doing such duties are single window operator 'B', is right ? To what relief the workers are eligible ?"

3. The association filed the claim statement. As per the claim statement, the conditions of service of workmen employed in the Management Bank are governed by all India Awards and Bipartite Settlements. Last such Bipartite Settlement is entered into on 27.04.2010 and is known as 9th Bipartite Settlement. As per Clause 11 (iii), (x,) (xi) of the above Bipartite Settlement read with part B of Schedule II and Schedule III which are continuation of the earlier Bipartite Settlements, a workmen assigned with the duties of holding Bank's cash, key and/or other valuables in safe custody with an officer and being accountable for them and being responsible

for the running of the Cash department, has to be paid a special pay of Head Cashier II at the rate of Rs.1780/- per month. Out of the above Rs.1000/- is merged with basic pay and Rs.780/- is paid as special pay. However in the Management Bank, none of the workers assigned with duties as cashier are paid special pay as stated above. They are paid a special pay of Rs.1500/- per month with Rs.1000/- being merged with basic pay and Rs.500/- as special pay. They are paid special pay lower by Rs.280/- per month. According to the Management, these workmen are designated as Cahier and not as Head Cashier II. The action of the Management is illegal, unjust and in violation of binding settlements. As per terms of clause 11(iii), (x) and (xi) of part B of Schedule II and Schedule III of the 9th Bipartite Settlement, the workmen assigned with the above said duties of Head Cashier are to be paid special pay of Head Cashier II at the rate of Rs.1780/- per month, irrespective of designation assigned to them by the Management. Since the workmen are doing the work of Head Cashier II as specified in Schedule 3 of 9th Bipartite Settlement, they are entitled for a special pay at the rate of Rs.1780/-. The Management is liable to give the workmen the special pay of Head Cashier II from 01.05.2000 with all arrears and attended benefits along with interest at the rate of 15% per annum from 01.05.2010 upto the date of payment.

4. The Management filed written statement denying the above allegations. The contention of the Union that as per the provisions of 9th Bipartite Settlement, the workmen assigned with the duties of holding Bank's cash, key or other valuables in safe custody with an officer and being responsible for running the cash department has to be paid a special pay of Head Cashier II at the rate of Rs.1780/- per month with Rs.1000/- being merged with basic pay and Rs.780/- as special pay is not correct. The interpretation of the above provision by the Union is not correct. As per clause 11(III) of 9th Bipartite Settlement, w.e.f. 01.05.2010, posts attracting special pay shall be provided in part B of Schedule II to the settlement. Clause (iv) provides that w.e.f. 01.05.2010, clerical staff who are drawing special pay for the post mentioned in part A (a), in Schedule II to the settlement as on 30.04.2010 shall continue to discharge the special pay duties as hitherto and as provided in Schedule III of Bipartite Settlement dt.02.06.2005. In addition, upon their re-designation as Single Window Operator-B w.e.f. 01.05.2010 as provided in clause 2 they shall also be liable to discharge the duties of Single Window Operator-B. While enhancing the special pay allowance as per Schedule II, part A(a) to 9th Bipartite Settlement, it is specifically stated that the duties which are performed by the clerical staff enjoying special pay allowance shall continue to discharge the existing duties as provided in the 8th Bipartite Settlement and they shall also discharge the duties of Single Window Operator-B. It is also provided in Schedule II part A(a) that and all the 27 posts mentioned therein including Head Cashier I, attracting special pay stands modified and re-designated as Single Window Operator-B. The duties to be performed by Head Cashier I is mentioned in previous settlements. In the Management Bank, there are no employees designated as Head Cashier I or Head Cashier II. No fresh duties having been incorporated in the 9th Bipartite Settlement relating to the duties of workmen. In the Management Bank, the workmen holding custody of cash is performing the same duties that were being preformed by them prior to the 9th Bipartite Settlement. The subject workers are not performing all the duties of Head Cashier II mentioned in Schedule III of 9th Bipartite Settlement. The Management is paying the workman what they are legally entitled to.

5. The Union filed replication denying the claims of the Management. The interpretation of the provisions of Clause 11 of 9th Bipartite Settlement and various sub clauses therein by the Management are not correct. By a plain reading of the Clause 11 of 9th Bipartite Settlement, more especially sub clause (iii), (x), (xi) read with part B of Schedule II and Schedule III which governed the workmen, the workmen assigned with the duties of holding bank's cash, key and other valuables in safe custody with an officer and being accountable for them and responsible for running the cash department has to be paid a special pay of Head Cashier II at the rate of Rs.1780/- per month w.e.f. 01.05.2010, out of this Rs.1000/- is merged with basic pay and remaining Rs.780/- is paid as special pay w.e.f. 01.05.2010. Sub clause 4 of Clause 11 of 9th Bipartite Settlement does not erase the effect of Sub clause 3 of Clause 11. Sub clause 4 only states that the incumbents in the post drawing special pay until 01.05.2010 will continue to discharge the special pay duties done by them until then, in addition to the duties of Single Window Operator-B to which they are re-designated from 01.05.2010. Therefore the workmen who are doing the duties of Head Cashier II is entitled for the special pay of Head Cashier II. These workmen are doing the work of Head Cashier II in addition to the duties performed by the Single Window Operator-B. The designation of employee is not decisive of for a workman to be entitled to a special pay in terms of the Bipartite Settlement. What is decisive is the performance of the duties and functions specified in respect of the post attracting the special pay. In the instant case, the workmen performing the duties of Head Cashier II and therefore the designation becomes irrelevant. As per provisions of Clause 11 of 9th Bipartite Settlement, changes as to special pay and special pay duties have been effected, which governs Management and the workmen. For entitling a workman to special pay applicable to Head Cashier II, it is not essential that all duties of Head Cashier II are to be performed as is clear from Para 5.9 of the 1st Bipartite Settlement.

6. After completion of the pleadings, the Union examined WW1 and marked Exbts.W1 to W2 and M1 to M16. Union also examined WW2 and marked Exbts.W3 through him. Management examined MW1.

7. The following issues are framed for final decision

1. Whether the workmen are eligible for higher special pay since they are discharging the duties of Head Cashier II ?

2. Relief and cost ?

**8.** **Issue no.1**

According to the learned Counsel for the Union, the issue involved is the interpretation of clause 11(iii), (x), (xi) read with part B of Schedule II and Schedule III which are in continuation of the earlier Bipartite Settlements. According to him, a workman who is assigned with the duties of holding banks' cash, key and/or other valuables in safe custody with an officer and being accountable for them and being responsible for running the cash department has to be paid a special pay of Head Cashier II at the rate of Rs.1780/- per month, with Rs.1000/- being merged with basic pay and Rs.780/- as special pay. The Management is paying the special allowance applicable to Single Window Operator-B which is at the rate of Rs.1500/- with Rs.1000/- merged with basic pay and Rs.500/- as special pay. The subject workmen are losing Rs.280/- per month.

9. According to the Counsel for the Management, there is no post of Head Cashier I or Head Cashier II in the Management Bank. As per 9th Bipartite Settlement, 27 posts attracting special pay were re-designated as Single Window Operator-B, Head Cashier category 1 is one among them. As per sub clause 4 of Clause 11 in 9th Bipartite Settlement w.e.f. 01.05.2010, clerical staff who are drawing special pay as posted mentioned in part A(a) in Schedule 2 to the settlement as on 30.04.2010 shall continue to discharge the special pay duties as provided in Schedule III of Bipartite Settlement dt.02.06.2005. In addition, they are also liable to do the work of Single Window Operator-B w.e.f. 01.05.2010. The Management has not assigned any additional work consequent on the implementation of 9th Bipartite Settlement. He also pointed out that the workmen holding custody of cash is performing the same duties that were being performed by them prior to the 9th Bipartite Settlement and no additional work had been assigned to them. He also pointed out that the workmen are not performing all the duties of Head Cashier II mentioned in Schedule III of the 9th Bipartite Settlement.

10. Both the Counsels relied on Clause 11 of the 9th Bipartite Settlement to drive home their respective arguments. Hence it is relevant to quote the Clause 11 in these proceedings.

" 11. **Special Pay**

i. In suppression of Clause 11 of the Bipartite Settlement dt.02.06.2005, w.e.f. 01.11.2007 and upto 30.04.2010, the Special Pay payable to the clerical staff and subordinate staff in banks other than State Bank of India shall be as mentioned under **Part A(a), (b), (c) and (d) in Schedule II** to this settlement.

ii. With effect from 01.05.2010, posts attracting Special Pay in Clerical cadre as mentioned in **Part A(a) of Schedule II** to this agreement shall stand modified and members of clerical staff performing the said duties shall be treated as those assigned with duties of Single Window Operator 'B'

iii. With effect from 01.05.2010, posts attracting Special Pay and Special Pay thereon shall be as provided in **Part B of Schedule II** to this settlement

iv. With effect from 01.05.2010, Clerical staff who are drawing Special Pay for posts mentioned in Part A(a) in Schedule II to this settlement as on 30.04.2010 shall continue to discharge the Special Pay duties as hitherto and as provided in Schedule III of Bipartite Settlement dt/02.06.2005. in addition, upon their re-designation as Single Window Operator 'B' w.e.f. 01.05.2010 as provided in Clause (2) above, they shall also be liable to discharge the duties of Single Window Operator 'B'.

As per Schedule II part A(a), 27 posts including that of Head Cashier 1 is re-designated as Single Window Operator-B. As per part B, the special pay for 3 categories of clerical staff are indicated. As per the above Clause, a Single Window Operator-B will get a special pay of Rs.1500/-, Rs.1000/- will be merged with basic and they will be entitled for a special pay of Rs.500/- w.e.f. 01.05.2010. Another category is that of Head Cashier II who is entitled for a special pay of Rs.1780/-, Rs.1000/- to be merged with basic pay and a special pay of Rs.780/- payable from 01.05.2010. According to the learned Counsel for the Union, the workmen involved are doing the work of Head Cashier II and therefore they are entitled for the special pay in respect of Head Cashier II. According to the Counsel for the Management, since the workmen continues to do the work which they were already doing prior to 01.05.2010, they will only be entitled for the special pay in respect of Single Window Operator-B which is now being paid to them. The learned Counsel for the Union pointed out that the dispute is regarding Rs.280/- special pay payable in addition to the special pay payable to Single Window Operator-B. There is no dispute regarding the fact that there is no post of Head Cashier I or Head Cashier II in the Management Bank. The learned Counsel for the Union submitted that since there is no post of

Head Cashier II in the Management Bank, it is required to be examined whether the Cashiers working in the Management Bank are doing the work of Single Window Operator-B or that of the Head Cashier II. The learned Counsel for the Management pointed out that the workmen are not doing all the work which a Head Cashier II is supposed to do as per Schedule III of the 9th Bipartite Settlement. As per Schedule III, a Single Window Operator-B shall in addition to the duties of Single Window Operator-A, do the following work.

a. Passing and cash payment of all cheques/withdrawal forms/bankers' cheques, gift cheques, etc., upto and including Rs.20,000/-

b. Passing independently clearing and transfer cheques, vouchers, etc., (whether credits or debits) upto and including Rs.25,000/-

c. Receipts of cash and issuance of pre-signed drafts/gift cheques/ travellers cheques/pay orders/bank orders, etc., upto and including Rs.25,000/-

The duties of Head Cashier II involved, holding the bank's cash, key and/or other valuables in safe custody jointly with an officer and being accountable for them and being responsible for running of the cash department;

1. Opinion compilation;
2. Verification of vernacular signatures/endorsements;
3. Countersigning cheques and/or drafts (on selves or correspondents), payment orders, deposit receipts, etc.
4. Attending to Govt treasury work
5. Discharging/endorsing bills cheques etc.,
6. Being in charge of clearing and godown departments etc.,
7. Passing independently clearing and transfer cheques, vouchers etc., (whether credits or debits) upto and including Rs.50,000/- and cash vouchers upto Rs.50,000/- jointly with an authorized person.

It can be seen that there is a clear distinction between the duties of Single Window Operator-B and that of Head Cashier II as per the 9th Bipartite Settlement. The learned Counsel for the Union pointed out that, from the evidence produced it is clear that the workmen were actually doing the work of Head Cashier II even if they are not doing all the work assigned to them as per the 9th Bipartite Settlement. Learned Counsel for the Management pointed out that as per Sub clause 4 of Clause 11 of the Bipartite Settlement, clerical staff who are drawing special pay for posts mentioned in part A(a) in Schedule II to the settlement as on 30.04.2010 shall continue to discharge the special pay duties as hitherto as provided in Schedule III of the Bipartite Settlement dt.02.06.2005. In addition they are also liable to do the work of Single Window Operator-B w.e.f. 01.05.2010 as provided in Clause 2. According to the Counsel for the Management, there is no change in the work allocated to the workmen herein and therefore they are not entitled for the special pay in respect of Head Cashier II, particularly so since there is no such post available in the Management Bank. It is felt that if there is no post of Head Cashier II and the workmen is substantially doing the work of Head Cashier II as per the 9th Bipartite Settlement, they are entitled for the special pay in respect of Head Cashier II. It can be seen from Schedule III that the main responsibility of Head Cashier II is holding the bank's cash, key and other valuables in safe custody jointly with an officer and is being accountable for them and being responsible for running of the cash department. Exbt.M1 to M6 are the true copies of work allotment registers in respect of 6 different branches of the Management Bank. These work allotment substantially establish the fact that the workmen while working as Cashier, are in charge of the cash section and were generally handling the work assigned to the Head Cashier II. Exbts.M7 to M14 are copies of the key book of Cashiers which establish the fact that they are joint custodians of cash key in all these branches. WW1 in his evidence also stated that he was joint custodian of key when he was working as Cashier-cum-Clerk in Punalur branch. He further stated that when he was in Palarivattom branch, he used to pass cheques upto the limit of Rs.20,000/-. WW2 also in his deposition pointed out that the Cashier-cum-Clerk in the Management Bank is the joint custodian of all security keys and he also counter signs the drafts, challans and without any limit they passed the cheques in the counter. MW1 in his deposition pointed out that the details of joint custody of cash and valuable keys can be known from the records maintained in the Bank and also from the key register maintained in the Bank and the work allotment register maintained in the branch will show that the nature of work that the Cashier-cum-Clerk are doing in the branches. Hence it can be seen from the evidence that the Cashier-cum-Clerks in the Management Bank are attending to the major duties assigned to a Head Cashier II, apart from the work assigned to the Single Window Operator-B. The learned Counsel for the Management vehemently argued that to become entitled for the benefits of Head Cashier II, the workmen shall be doing all the work assigned to them as per the Bipartite Settlement. The learned Counsel also pointed out that the workmen continued to do the same work as they were doing prior to the 9th Bipartite

Settlement and no additional work is assigned to them after the 9th Bipartite Settlement. According to him, Sub clause 4 of Clause 11 of the Bipartite Settlement shall be invoked in the case of workmen. The learned Counsel for the Union pointed out that as per Clause 5.9 of 1st Bipartite Settlement "a workman will be entitled to special allowance only so long as he is in charge of such work or **the performance of such duties which attract such allowance**". As already pointed out, the workmen are doing the work of Single Window Operator-B and in addition to that they are also doing the main work of holding the Bank's cash, key and/or other valuables in safe custody jointly with an officer. In many of the work allotment orders, it is seen that they are also responsible for running of the Cash Department. Hence it is not possible to accept the claim of the learned Counsel for the Management that the workmen are entitled only for the special allowance of Single Window Operator-B.

Considering the facts, circumstances, pleadings and evidence discussed above, I am of the considered view that the workmen while doing the work of Cashier-cum-Clerk in the Management Bank is entitled to the benefit of special pay of Head Cashier II as mentioned in part B of the 9th Bipartite Settlement.

**11. Issue no.2**

It is already found in issue no.1 that the workmen, when they are doing the work of Clerk-cum-Cashier, they are entitled for the special pay equivalent to Head Cashier II in part B of the 9th Bipartite Settlement.

12. Hence an award is passed holding that the workmen are entitled for a special pay of Rs.1780/- per month with Rs.1000/- being merged with basic pay and Rs.780/- as special pay w.e.f. 01.05.2010 ie., the date from which the 9th Bipartite Settlement is effective.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of May, 2022.

V. VIJAYA KUMAR, Presiding Officer

**APPENDIX**

**Witness for the Workman:-**

| | | |
|---|---|---|
| WW1 | - | Sri.Judeson K. A., dt.08.06.2017 |
| WW2 | - | Sri.Sebastian Puthoor, dt.26.03.2019 |

**Witness for the Management:- Nil**

**Exhibits for the Workman:-**

| | | |
|---|---|---|
| W1 | - | The print out of the salary statement of WW1 pertaining to the month of June 2010 |
| W2 | - | The print out of the salary statement of WW1 pertaining to the month of May 2016 |
| W3 | - | The print out of the salary statement of WW2 pertaining to the month of November 2010 |

**Exhibits for the Management:-**

| | | |
|---|---|---|
| M1 | - | True copy of work allotment registers in respect of allotment of work to work mentioned at Thumbamon branch from 06.06.2009 to 01.06.2016 |
| M2 | - | True copy of work allotment registers in respect of allotment of work to work mentioned at Kochi-I branch from 01.07.2008 to 20.06.2016 |
| M3 | - | True copy of work allotment registers in respect of allotment of work to work mentioned at Trivandrum Main branch from 31.08.2006 to 22.02.2016 |
| M4 | - | True copy of work allotment registers in respect of allotment of work to work mentioned at Chittur branch from 12.03.2009 to 01.01.2016 |
| M5 | - | True copy of work allotment registers in respect of |

| | | |
|---|---|---|
| | | allotment of work to work mentioned at Kasaragod branch from 19.02.2007 to 01.08.2016 |
| M6 | - | True copy of work allotment registers in respect of allotment of work to work mentioned at Thalikulam branch from 02.03.2009 to 01.08.2016 |
| M7 | - | True copy of cash key register maintained at Palarivattom branch from 30.08.2009 to 22.09.2016 |
| M8 | - | True copy of cash key register maintained at Thumbamon branch from 22.12.2009 to 25.07.2016 |
| M9 | - | True copy of cash key register maintained at Punalur branch from 22.06.2009 to 28.04.2016 |
| M10 | - | True copy of cash key register maintained at Kochi-I branch from 20.08.2007 to 03.02.2014 |
| M11 | - | True copy of cash key register maintained at Trivandrum Main branch from 10.07.2009 to 01.08.2016 |
| M12 | - | True copy of cash key register maintained at Chittur branch from 03.06.2010 to 14.08.2016 |
| M13 | - | True copy of cash key register maintained at Kasaragod branch from 27.10.2012 to 12.08.2016 |
| M14 | - | True copy of cash key register maintained at Talikulam branch from 31.05.2010 to 23.09.2016 |
| M15 | - | True copy of the salary statement for the month of July 2010 issued to Sri.K.A. Judeson |
| M16 | - | True copy of the salary statement for the month of August 2010 issued to Sri.K.A. Judeson |

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1048.**—औद्योगिक विवाद अधिनियम, (1947 1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे प्रबंध के तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण **लखनऊ** के पंचाट (संदर्भ संख्या 60/2014) को प्रकाशित करती हैं ।

[सं. एल -41012/28/2014- आई आर (बी.1)]

ए.के.यादव, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1048.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 60/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen.

[No. L-41012/28/2014– IR(B-1) ]

A.K. YADAV, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW**

**Present :** Justice Anil Kumar presiding officer

**I.D.No. 60/2014**

**Ref.No. L-41012/28/2014 – IR(B-1)**

**BETWEEN**

Shri Hari Prasad S/o Late Kanhiya Lal C/o Shri Parvej Alam,
83/63, Kh Gari Kannora Premvati Nagar,Manak Nagar, Lucknow (U.P)

**AND**

The Divisional Signal & Tele Communication Engineer (Construction),
North Eastern Railway DRM Office, Ashok Marg, Lucknow

**AWARD**

By Order by latter dated 14.10.2014 issued by Government of India, Ministry of Labour, Shram mantralaya the following reference is made to this tribunal.

**SCHEDULE**

**"क्या पूर्वोत्तर रेल प्रशासन, लखनऊ द्वारा श्री हरी प्रसाद पुत्र स्व० कन्हैया लाल, ग्रेड -1 को क्वालीफ़ाइंग सर्विस 23 वर्ष 04 माह 05 दिन के आधार पर सेवानिवृत्त हित लाभों का भुगतान न किया जाना न्यायोचित एवम वैध है? यदि नहीं तो कामगार किस राहत को पाने का हकदार है?"**

1. In Pursuance to the above said fact present ID Case No 60/2014 has been registered before this tribunal.

2. On 1.12.2014 the claimant Shri Hari Prasad has filed his claim thereby claiming his post retial dues for the periods 23 years 4 months 5 days.

3. On 24 July 2015. Respondent has filed written statement and stated there in that the claimant has already been paid his retial dues for the period 18 years5 months and 17 days for which is intital as per the ruls/notifaction. Thereafter claimant has filed replication as well as his evidence on affidavit.

4. From the perusal or record/ordersheet the position which emerge out that claimant is attending the proceeding since 30.03.2022.

5. Today neither the claimant /workman nor his legal representative is present.

6. Shri Rahul Nigam advocate/legal representative is present .

7. Accordingly the present case is dismissed for want of presecution.

8. Thus claimant/workman is not intital for any relief.

9. Award as above.

10. Let two copies of the award be sent to the Ministry for publication.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1049.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 39/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2022 को प्राप्त हुआ था।

[सं. एल-22012/198/95-आई. आर. (सी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1049.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/1996) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on 12/10/2022.

[No. L-22012/198/95 – IR (C-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/39/1996**

Present: P.K.Srivastava H.J.S..( Retd)

The General Secretary,
M.P.Koyla Mazdoor Sangh(H.M.S.)
Post south J.K.D.Colliery
District Sarguja(M.P.) ... Workman

**Versus**

The Sub-Area Manager
Rajnagar Iron Cast Mine,
Post-Bangwan,
District Shahdol(M.P.)

... .Management

**AWARD**

**(Passed on 28-9-22)**

As per letter dated 30/1/1996 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012(198)/95-IR(C-II). The dispute under reference relates to:

"***Whether the demand of the General Secretary, M.P.Koyla Mazdoor Sabha (HMS) for regularisation of the sweeping workers names in the Schedule below on the roll of Rajnagar opercast Mines of SECL,Hasdeo Area is legal and justified? To what relief these workmen are entitled?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. According to the workmen Union Garulal and 10 other workmen as per the list enclosed with the reference are working as sweepers in Raj Nagar Open Cast mine of Hasdeo Area of SECL. The coal Industry is Governed by Mines Act,1952 as well as National Coal Wage Agreement(in short known as NCWA). Sweeping man power is required to maintain the sanitary and conservancy services for which sweeping manpower is required. It depends on the man power strength of the colliery. The Sweeping Manpower as to maintain cleanliness by sweeping in the dispensaries, in the office buildings, cleaning the drains residential and office complexes, hence it is part and parcel of activity of the coal industry and is incidental to. It is mentioned in the National Coal Wage Board-1967, which is being reproduced as follows:-

> **Nomenclature ,Job Description and Categorization of Coal Employees as finalized by Standardization Committee constituted by JBCCI.**
>
> **All mazdoor generally employed to clean the surface area including screening and washing plants from dirt etc. He may be employed under the Medical officer to keep the area around the colliery Dhowrahs and colliery drains in good order.**

3. This nomenclature and job description has been followed in I.I.No.69 where it has been reproduced and affirmed. It is a job of prohibited category which is prohibited vide notification dated 1-2-1975, Ministry of labour, Government of India. These workmen were engaged by management for sweeping job in Rajnagar Open Cast. Their services were utilized to keep the area around the colliery Dhowrahs and colliery drain in good order under supervision of the medical officer. They have been working with regular employees for sweeping job by Management everywhere under the strict Company Management. Their attendance is also marked by Management personnel. According to the NCWA-3/4 Rule 11.5.1 Industry shall not employ labour contract or engage contractor labour on jobs of permanent and perennial nature which is confirmed by National Coal Wage

Agreements thereafter. Hence, as alleged by Workman Union, sweeping is a job classified in Standing Orders and is of permanent and perennial nature for which contract labour cannot be engaged as provided under Section 1(5) of the Contract Labour(Regulation & Abolition)Act 1970. It is further the case of the workman Union that these workman were engaged for sweeping by management through ghost contractors who never existed in fact and they worked under control and direction of the Management of the Company for the purposes of sweeping and cleaning of Mines as well Management Companies. This action of management bringing in ghost contractors is only to deny these workman of their legitimate rights regarding wages and other incidental benefits which is unfair labour practice. They were paid wages lesser than that was paid to regular employees of the management doing the same job. Thus according to the workman Union since these workman were engaged in sweeping activity which is being done by regular work force of management, this activity is of prohibited nature, it is of permanent and perennial nature and they all have completed 240/190 days in every year since their engagement till date. They are entitled to be treated at par with the regular work force of management doing the same job and further entitled to all the service benefits and wages admissible to the regular man power doing the same job. Accordingly the workman has prayed that holding the demand of the workman union for regularization of the applicant workman sweepers justified in law they be held entitled to wages and benefits at par with the regular work force discharging the same duties.

4. The Management has denied the allegations of the workman Union that these workman were engaged for the job of sweeping. According to Management Job of sweeping is not incidental to the activity of coal industry. The case of management is that these workmen have been engaged through contractors only for the work of cleaning of swimming pool and colony etc. which is not a part of sweeping. Accordingly the Management has prayed that the reference be answered against the workman.

5. In its rejoinder the workman Union has reiterated its case and has alleged that these workman are engaged in sweeping job since 1987 along with regular employees of Management . They have been engaged for removal of garbage, in sanitization activities and have been discharging these duties with the regular work force of the management company doing the same job. According to the Workman Union sweeping job is of permanent and perennial nature for which contract labour cannot be employed further that these workers are still doing the same job but under sham and non existing contractors.

6. In evidence workman Rampyare , Papu have been examined by the workman union. They have been examined by Management. Many other workman have filed their affidavit as their examination in chief but they have not been cross-examined by management because they did not appear for cross-examination, hence their affidavit will not be read in evidence.

7. The Management has examined its witness Bhuvnesh Kumar Mishra, he never appeared for cross-examination of management nor examined its witness Sandeep Kumar Banerjee, Sr. Manager Civil hri A.P.Ganorkar , subordinate Engineer Civil they have been cross-examined by workman Union.

8. The workman Union has filed and proved documents and payment bills of one alleged contractor pappu and other alleged contractor Kallan and Hasmat where bills of each alleged contractor who are in fact sweepers themselves doing the job of sweeping in the company. They are the workman included in the Schedule to the Reference. This document is collectively marked as Exhibt-W1. The management has further filed and proved Exhibit W-2 and W-2A certificate of Medical Superintendent showing that workman Hasmat was engaged in cleaning in dispensary on the dates when the certificate was issued. Exhibit W-3 and Exhibit W-3b and W-A2, Exhibit W-3K are difference certificates to different applicant workman doing the work of cleaning septic tank, some time they clear the toilet. The workman Union has further filed Exhibit W-4 which are two Registers maintained by these workmen in due course of their employment, mentioning the details of the work done by them on different dates. The workman Union has further filed the identity proof of these workmen. The vocational training services Exhibit W-6 to W-13 of these workman.

9. The management has filed and proved labour payment certificates Exhibit M1, M2 and M3. Copy of notification of Central Government, 1975 issued by the Central Government regarding work of prohibited category. I have heard arguments of Shri R.C.Shrivastava appearing for workman Union and Shri A.K.Shashi, learned Counsel for the management. I have gone through the record as well.

10. The following issues arise for determination after perusal of record in the light of rival arguments:-

**(1) Whether the management of SECL as adopted unfair labour practice in the case in hand?**

**(2) If the answer to Issue No.1 is yes, whether the demand of the workman Union for regularization of these workman is justified in law and whether these workman are entitled to wages and benefits at par with regular work force of management doing the same work.**

**11. ISSUE NO.1:-**

Before entering into merits some provisions of law requires to be mentioned here which are being reproduced as follows:-

**Section 2T of the Industrial Disputes Act, 1947.**

**25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.**

**.Schedule V Unfair Labour Practice, of the Industrial Disputes Act,1947.**

**[THE FIFTH SCHEDULE**

**[*See*section 2(*ra*)]**

**UNFAIR LABOUR PRACTICES**

**I.—*On the part of employers and trade unions of employers***

**1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form,join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining orother mutual aid or protection, that is to say:—**

**(*a*) threatening workmen with discharge or dismissal, if they join a trade union;**

**(*b*) threatening a lock-out or closure, if a trade union is organised;**

**(*c*) granting wage increase to workmen at crucial periods of trade union organisation, with aview to undermining the efforts of the trade union organisation.**

**2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that isto say:—**

**(*a*) an employer taking an active interest in organising a trade union of his workmen; and**

**(*b*) an employer showing partiality or granting favour to one of several trade unions attemptingto organise his workmen or to its members, where such a trade union is not a recognised tradeunion.**

**3. To establish employer sponsored trade unions of workmen.**

**4. To encourage or discourage membership in any trade union by discriminating against anyworkman, that is to say:—**

**(*a*) discharging or punishing a workman, because he urged other workmen to join or organise a**

**trade union;**

**(*b*) discharging or dismissing a workman for taking part in any strike (not being as trike which is deemed to be an illegal strike under this Act);**

**(*c*) changing seniority rating of workmen because of trade union activities;**

**(*d*) refusing to promote workmen to higher posts on account of their trade union activities;**

**(*e*) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;**

**(*f*) discharging office-bearers or active members of the trade union on account of their trade union activities.**

**5. To discharge or dismiss workmen—**

**(*a*) by way of victimisation;**

**(*b*) not in good faith, but in the colourable exercise of the employer's rights;**

**(*c*) by falsely implicating a workman in a criminal case on false evidence or on concocted**

**evidence;**

**(*d*) for patently false reasons;**

**(*e*) on untrue or trumped up allegation of absence without leave;**

**(*f*) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;**

**(*g*) for misconduct of a minor or technical character, without having any regard to the nature ofthe particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.**

**6. To abolish the work of a regular nature being done by workmen, and to give such work tocontractors as a measure of breaking a strike.**

**7. To transfer a workman *mala fide* from one place to another, under the guise of followingmanagement policy.**

**8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as apre-condition to allowing them to resume work.**

**9. To show favouritism or partiality to one set of workers regardless of merit.**

**10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years,with the object of depriving them of the status and privileges of permanent workmen.**

**11. To discharge or discriminate against any workman for filing charges or testifying against anemployer in any enquiry or proceeding relating to any industrial dispute.**

**12. To recruit workmen during a strike which is not an illegal strike.**

**13. Failure to implement award, settlement or agreement.**

**14. To indulge in acts of force or violence.**

**15. To refuse to bargain collectively, in good faith with the recognised trade unions.**

**16. Proposing or continuing a lock-out deemed to be illegal under this Act.**

**II.—*On the part of workmen and trade unions of workmen***

**1. To advise or actively support or instigate any strike deemed to be illegal under this Act.**

**2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say:—**

**(*a*) for a trade union or its members to picketing in such a manner that non-striking workmen arephysically debarred from entering the work place;**

**(*b*) to indulge in acts of force or violence or to hold out threats of intimidation in connection witha strike against non-striking workmen or against managerial staff.**

**3. For a recognised union to refuse to bargain collectively in good faith with the employer.**

**4. To indulge in coercive activities against certification of a bargaining representative.**

**5. To stage, encourage or instigate such forms of corrective actions as wilful "go slow", squatting onthe work premises after working hours or "gherao" of any of the members of the managerial or other staff.**

**6. To stage demonstrations at the residence of the employers or the managerial staff members.**

**7. To incite or indulge in willful damage to employer's property connected with the industry.**

**8. To indulge in acts of force or violence or to hold out threats of intimidation against anyworkman**

**with a view to prevent him from attending work.]**

12. The respective pleadings of the parties on this issue have been detailed earlier. According to the workman Union the workman who are engaged in the job of sweeping under the pretext of contractors labourers which is a sham and camouflage to deprive them from admissible benefits. The Workman Union has referred to **Nomenclature, Job Description and Categorization of Coal Employees as finalized by Standardization Committee constituted by JBCCI.** classification of posts at Serial No.19 of Central Government Coal Wage Board 1967 which is being reproduced as follows:-

**SWEEPING:- A mazdoor generally employed to keep the surface area including screening and washing plants free from dirt's etc. He may be employed under Medical Officer to keep the area**

**around the colliery Dhowrahs and Colliery drain in good condition. This has been followed by Implement Instruction No.69 in National coal Wage Agreement-3.**

13. Thus According to the workman Union the job of sweeping is one for which regular employees are to be employed by Management. The Workman Union has referred to para 11.5.1 and 11.5.2 in this respect of National Coal Wage Agreement-3 which is being reproduced as follows:-

**11.5.1 NCWA-III:- Industries should not employ labours through contractors or engage contractors labour on jobs of permanent and perennial nature."**

**11.5.2 NCWA-III:- The jobs which have been and are being taken by regular employees shall be continued to be taken by the Regular Employees themselves.**

14. The workman Union has further referred to Section (1)(5) of the Contract Labour(Regulation and Abolition) Act 1970 and Section 25(b)(2) of the Industrial Disputes Act,1947 which is as follows:-

**SECTION 1(5) *Contract Labour(Regulation and Abolition)Act 1970***

**1(5)(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final. Explanation.- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature- (i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or (ii) if it is of a seasonal character and is performed for more than sixty days in a year.**

**6[25B(2). Definition of continuous service:**

**1.----------**

**(*2*) where a workman is not in continuous service within the meaning of clause (*1*) for a period ofone year or six months, he shall be deemed to be in continuous service under an employer—**

**1. Ins. by Act 36 of 1964, s. 12 (w.e.f. 19-12-1964).**

**(*a*) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which Calculation is to be made, has actually worked underthe employer for not less than—**

**(*i*) one hundred and ninety days in the case of a workman employed below ground in amine; and**

**(*ii*) two hundred and forty days, in any other case;**

**(*b*) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—**

***(i)*** **ninety-five days, in the case of a workman employed below ground in a mine; and**

***(ii)*** **one hundred and twenty days, in any other case.**

***Explanation*.—For the purposes of clause (*2*), the number of days on which a workman has actually worked under an employer shall include the days on which—**

**(*i*) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;**

***(iii)*** **he has been on leave with full wages, earned in the previous years;**

***(iv)*** **he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and**

***(v)*** **in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]**

15. According to the workman these workers have done the job of sweeping which is done by the Regular work force of the management. They have worked for the profit and business of the Management and the case of the Management that they are contractor workers is sham because the allotted contractor is itself is a camaflouge to deny the workman of their legally admissible claims. The case of the management is mainly that these workman are not engaged in sweeping. Secondly sweeping is not a part and parcel of activity of coal industry. Thirdly sweeping is not a work of prohibited category as per the notification of Central Government

dated 21-6-1988 "**the work of sweeping does not find mention in the list of prohibited employment"** and as per the notification issued by the Central Government in the year 1988 and the workman union has referred to Notification of year 1975 which has been superseded by the Notification of year 1988. According to the management in fact these workman are engaged for cleaning swimming pool colony etc. and for the removal of garbage's from the campus. Notification of Central Government dated 1-2-1975 referred to by the workman union is being reproduced as follows:-

**"NOTIFICATION**

**In exercise of the powers conferred by Sub-Section (1) of Section 10 of the Contract Labour (Regulation & Abolition)Act,1970(10 of 1970), the Central Government after consultation with the Central Board, hereby prohibits employment of contract labour in the works specified in the schedules Annexed hereto in all Coal Mines.**

**THE SCHEDULE**

**1.....**

**2.....**

**3.....**

**4.....**

**5.....**

**6.Sweeping, Cleaning, dusting and watching of buildings owned or occupied by establishments.**

16. In the light of the aforesaid contention, the point remains to be decided is whether the workman have been engaged in sweeping as mentioned in Category No.19 of Sweepers in the list of posts/jobs to be done by workforce of Management.

17. The workman witness have categorically stated in their statement on oath that they have been engaged in the work of cleaning the drains, the offices, the toilets and other establishments belonging to Management near Mines in the office and in the residential colonies. The documentary evidence proved by the workman witness which is in the form of certain duty slips Exhibit W-2, Exhibit W2A, Exhibit W3, Exhibit W3A to W3K goes to show that these workmen have been done the work of cleaning in the dispensary, cleaning the toilet jams, cleaning the septic tanks, removal of dead dogs and animal found in the residential area, cleaning the kitchen pipes, tank jams, cleaning the drains. Exhibit W-2 is the register maintained by the workman wherein their requisition on different dates and jobs regarding cleaning as mentioned above has been maintained in due course by them.

18. The workman have also filed and proved their vocational training certificate that they were trained by Management and issued certificate in this respect by management. This is also in their statements that the so called contractors Pappu, Hasmat and Kallan are in fact one these workman which the Management shows or pretends to be the contractors allotted these works. Exhibit W-1 nine pages which is payment of bills of these so called contractors coupled with the statements of these persons that in fact they were the workers Management fraudulently used to prepare bills in their names in order to show that the workman engaged were contract workers.

19. On the other hand, the Management has examined its witness and has corroborated the case of the management as stated above. Management has further filed the photocopies of work orders total 24 in number issued between the periods 27-2-1994 to 10-8-1997 to show that work orders were issued to different contractors for these works. Names of contractor Buddh Singh Rathore, Dipak Mishra, Sitaram Mehta and Rajni Shrivastava find mention in these work orders. The work for which these work orders were issued is a Jungle clearance in uprooting vegetation and sweeping of earth work in excavation in trenches and drains. None of these contractors have been examined by Management to corroborate the case of the management that the workmen were engaged by the contractors for the work allotted in the work orders. The management witness Sudeep Kumar Banerjee, Senior Manager Civil and ShriA.P.Ganorkar, Subordinate Engineer were examined by Management and they have been cross-examined by the workman Union. Shri Sudeep Kumar Banerjee states in his cross-examination that he was posted in Rajnagar Open Cast Mine 1989 to 2000. He does not know the workers connected with the present records. The work of sweeping of cleaning includes cleaning by brooms, removal of garbage. Mines have staff for cleaning and sweeping work, regular staff does the job of cleaning and sweeping also, sanitation which includes removal of night soil , removal of chockage of night soil chamber, cleaning of drains. He pleaded ignorance of the fact that whether these workers were engaged in sanitation and cleaning works or not? The second witness of management A.P.Ganorkar admits in his cross-examination that the work of these workman was inspected by the civil department of the Management. The work was allotted by

the Contractor. These workman used to do job of cleaning of drains, service pipe line, choked sewer line, removal of garbage of dead animals. They were paid through the contractor.

20. As stated earlier the three so called contractors Papu, Hasmat and Kallan have been found to be the co-workman under the reference. They have examined themselves. The different work slips filed and proved by the workman union through its witness referred earlier shows that these workman under reference were given the job of sweeping and cleaning in different manners, details mentioned above. The work orders filed by management, reference given above show that it was issued for jungle clearance and earth work in excavation in trenches and drains also the work of sweeping as it is mentioned in these work orders. Hence unless the work order also show that the work was of sweeping was also allotted to the contract workers in the work orders filed by the Management. The work of sweeping though it is not prohibited in the notification of 1988 issued by the Central government under Section 10 of the Contract Labour(Regulation and Abolition)Act 1970 but it is still in violation of para 11.5.2 of NCWA which states that the works being taken by the Regular staff shall be continued to be taken by the regular staff only. Hence it can be surely concluded that these workers were engaged in the job of sweeping also for which the regular work force of the management was engaged and they were doing it almost the same job which was being taken by the regular staff of management for this work which is in violation of Implementation Instructions issued in NCWA-3 /4 which provides that jobs which are being taken by regular work force of the Management still continue to be taken by the Management.

21. Consequently it also comes out from the evidence on record that the workmen were engaged in the job right from 1991 till 1997 and thereafter. Section 1(5) of the Contract Labour(Regulation and Abolition)Act 1970 prescribes engagement of contract labour for more than six months, which is being reproduced as under:-

**Section 1(v)(a) of Contract Labour (Regulation & Abolition) Act,1970.**

**Section 1(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.**

**Explanation.-For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-**

**(i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or**

**(ii) if it is of a seasonal character and is performed for more than sixty days in a year.**

22. Now two facts stand proved from the above discussion, they are firstly the work which was taken by the applicant workman was done by the regular workers of the Management and secondly the work was of permanent and perennial nature. Hence this action of Management is nothing but unfair labour practice as mentioned earlier. Since the agreement was awarded for a work or for a purpose in prohibition of law, the object of the agreement was not lawful under Section 23 of the Indian Contract Act 1972 declaring such type of agreements as void agreements. Thus in agreement between Management and contractor for taking work of sweeping as mentioned in the work orders referred to above, is not a contract defined under Section 2h of the Indian Contract Act 1872. Section 23 and Section 2h of the Indian Contract Act 1872 is being reproduced as follows:-

**Section 23 of Indian Contract Act,1872 enumerates the list of void agreements which is as follows:-**

**23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful.**

**2(h) "wages" shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936);**

**Issue No.1 is answered accordingly.**

23. **ISSUE NO.2:-**

In the light of the finding recorded in Issue No.1, the point arises regarding its legal effects. The learned counsel for the workman submits that when unfair labour practice has been established in the case in hand, this Tribunal cannot be a mute spectator and has to intervene and pass suitable orders for undoing such practices. The learned counsel has referred to the following decisions:-

**Bharat Bank Vs. Employees of Bharat Bank Ltd**.(1950) L.L.J.921 held :-

**"that in settling the dispute between the employers and the workman the function of Tribunal is not confined to administration of justice IN accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It can create new rights and oblations between them which it consider essential for keeping industrial peace.**

**16.** **Siemens Ltd. Vs. Employees Union** (2011) 9 SCC 775 held that:-

**"Where commission of unfair labour practice is ex-facie is clear from the facts, even without pleadings, courts have power to adjudicate the same to resolve the dispute. It is necessary to achieve industrial peace and harmony."**

24. On the other hand, the learned counsel for the Management has submitted that even if in such a condition the workman cannot be treated an an employee of the Management and he will not be entitled to any relief from Management because they are workers engaged by the Contractor. The learned counsel for the Management has referred to following cases in this respect:-

**The Director SAIL India vs. Ispat Khadandan Mazdoor Union ,(Civil Appeal no- 8081-8082 of 2011) reported in AIR 2019 SC 3601. Para 33,35,39,41,44,46,48,49** have been specifically referred to by learned counsel as follows:-

**"Before we may advert to examine the question in the instantappeals any further, it will be apposite to take note of the legaleffect of the prohibition notification issued by the appropriate Government in exercise of power under Section 10(1) of CLRA Act and its exposition by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others (supra) overruling the judgment in Air India Statutory Corporation and Others (supra).**

**The legal consequence of Section 10(1) of the CLRA Act,has been noticed in paragraph 68, 88, 105 and 125 as follows:¬**

**24"68.We have extracted above Section 10 of the CLRAAct which empowers the appropriate Government toprohibit employment of contract labor in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under subsection (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor, is neitherspelt out in Section 10 nor indicated anywhere in the Act.**

**In our view, the following consequences follow onissuing a notification under Section 10 (1) of the CLRA Act:**

**(1) contract labor working in the establishment concerned at the time of issue of notification will cease to function;**

**(2) the contract of principal employer with thecontractor in regard to the contract labor comes to an end;**

**(3) no contract labor can be employed by the principal employer in any process,operation or other work in the establishmentto which the notification relates at any time thereafter;**

**(4) the contract labor is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labor;**

**(5) the contractor can utilise the services of the contract labor in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;**

**(6) if a contractor intends to retrench his contract labor, he can do so only in conformity with the provisions of the ID Act. The point now under consideration is: whether automatic absorption of contract labor working in anestablishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification there under. We shall revert to t his aspect shortly.**

**If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labor system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament**

**intended to create a bar on engaging contract labor in the establishment covered by the prohibition notification,by a principal employer so as to leave no option withhim except to employ the workers as regular employeesdirectly. Section 10 is intended to work as a permanentsolution to the problem rather than to provide a onetime measure by departmentalizing the existing contract labor who may, by a fortuitous circumstance be in a given establishment for a very short time as onthe date of the prohibition notification. It could as well be that a contractor and his contract labor who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labor engaged on the relevant date over the contract labor employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labor in the CLRAAct.105.The principle that a beneficial legislation needs tobe construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for thatprovided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labor and 26 authorizes in Section 10(1) prohibition of contract labor system by the appropriate Government on consideration of factors enumerated in sub¬section (2) of Section 10 of the Act among other relevant factors.But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labor on issuing notification under sub-section (1) ofSection 10. Admittedly, when the concept of automatic absorption of contract labor as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25of the CLRA Act, it is not for the High Courts or thisCourt to read in some nspecified remedy in Section10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labor in the establishment of principal employer or a lesser or a harsher punishment. Such aninterpretation of the provisions of the statute will be farbeyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult toaccept that Parliament intended absorption of contract labor on issue of abolition notification under Section 10(1) of the CLRA Act.**

**125.The upshot of the above discussion is outlined thus:**

**(1) (a) Before 28¬1¬1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port , mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which 27 the establishment was situated, would be the appropriate Government;**

**(b) After the said date in view of the new definition ofthat expression, the answer to the question referred toabove, has to be found in clause (a) of Section 2 of theIndustrial Disputes Act; if (i) the Central Government company/ undertaking concerned or any undertakingconcerned is included therein eo nomine, or (ii) any industry is carried on:**

**1. (a) by or under the authority of the Central Government, or**

**(b) by a railway company;or**

**(c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.**

**(2)(a) A notification under Section 10(1) of the CLRAAct prohibiting employment of contract labor in anyprocess, operation or other work in any establishmenthas to be issued by the appropriate Government: (1) after consulting with the Central AdvisoryBoard or the State Advisory Board, as the case may be, and**

**(2) having regard to(i) conditions of work and benefits provided for the contract labor inthe establishment in question, and(ii) other relevant factors including those mentioned in sub¬section (2) of Section 10;**

**(b) Inasmuch as the impugned notification issued bythe Central Government on 9¬12-1976 does not satisfy he aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on thebasis of this judgment nnoorder passed or no actiontaken giving effect to the said notification on or before28the date of this judgment, shall be called in question inany tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.**

**(3) Neither Section 10 of the CLRA Act nor any otherprovision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labor, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labor working in the establishment concerned.**

**(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare thatany direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labor following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on thebasis of this judgment in cases where such a direction has been given effect to and it has become final.**

**(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labor in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contractlabor for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as todeprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labor will have tobe treated as employees of the principal employer who shall be directed to regularise the services of the contract labor in the establishment concerned subject to the conditions as may be specified by it for thatpurpose in the light of para 6 hereunder.**

**29 (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labor in any process, operation or other work of any establishment and where in such process, operation or other work ofthe establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labor, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."**

**33. The exposition of the judgment of the Constitution Bench ofthis Court made it clear that neither Section 10 nor any otherprovision in the CLRA Act provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under Section 10(1) of CLRAAct.Consequently, the principal employer is not required or is underlegal obligation by operation of law to absorb the contract laborworking in the establishment. 34. This court in Steel Authority of India Ltd. and Others (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor in any process, operation or other work, if any**

**30. industrial dispute is raised by any contract labor in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. Ifthe contract is found to be sham, nominal or camouflage, then the so called labor will have to be treated as direct employee of the principal employer and the industrial adjudicators should direct the principal employer to**

**regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case.**

**35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, theprincipal employer intending to employ regular workmen for theprocess, operation or other work of the establishment in regard towhich the prohibition notification has been issued, it shall givepreference to the erstwhile contract labor if otherwise foundsuitable, if necessary by giving relaxation of age as it appears tobe in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.**

**34. It may be noted that the learned counsel for the respondenthas placed reliance on the judgments of this Court in:-**

**Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another ; Hussainbhai, Calicut Vs. Alath Factory Thezhilali Union, Kozhikode and Others ; Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena and Others and these cases have been considered by the Constitution Bench of this Court in SteelAuthority of India Ltd. and Others(supra) of which a detailed reference has been made by us.**

**35.. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labor agreement is sham, nominal or a t1974(3) SCC 498 5 1978(4) SCC 257 6 1999(6) SCC 439 32 mere camouflage has been examined by this Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another by the two¬ judge Bench of this Court. The relevant paras are as under:¬**

**"38. The tests that are applied to find out whether a person is an employeeor an independent contractormay not automatically apply in finding out whether thecontract labor agreement is a sham, nominal and is amere camouflage .**
**For example, if the contract is forsupply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment iswith the contractor, and the` ultimate supervision and control lies with the contractor.**

**39. The principal employer only controls and directsthe work to be done by a contract labor, when such labor is assigned/allotted /sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subjectto what conditions. Only when thecontractor assigns/sends the worker to wok under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."**

**40. These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and 2009 (13) SCC 374 33whether the agreement pursuant to which contract labor has been engaged through contractor can be said to be sham, nominal and camouflage.**

35. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its noncompliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in International Airport Authority of India case(supra) where the contract was to supply of labor and necessary labor was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labor to be sham and bogus per se. Thus, in our considered view, if the scheme of the CLRA Act and other legislative enactments which the principal establishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came onrecord, the finding which has been recorded by the CGIT underits award dated 16th September, 2009 in absence of the finding offact recorded being perverse or being of no evidence and even ifthere are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article

226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.

36. It is true that judgment in Dena Nath and Others (supra)is in reference to failure of compliance of Section 7 and 12 andnot in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, noncompliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referredto in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act."

37. Learned counsel for Management has further referred to a decision of Supreme Court in **SLP No.33798-33799 2014,BHARAT HEAVY ELECTRICALS LTD. Vs MAHENDRA PRASAD JAKHMOLA & ORS.**

The relevant portion of the judgment referred to by learned counsel is being reproduced as follows:-

"***We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms. Asha Jain. In 'General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another' [2011 (1) SCC 635], it was held that the well recognised tests to find out whether contract laborers are direct employees are as follows:***

***"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workmen is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract laborers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor;***

***and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant" The expression 'control and supervision' were further explained with reference to an earlier judgment of this Court as follows:***

***"12. The expression "control and supervision" in the context of contract labor was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union thus: (SCC p.388, paras 38-39) "38.... if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.***

***39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him.***

***But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) but that is secondary control. The primary control is with the contractor." From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor 'what to do' after the contractor assigns/ allots the employee to the principal employer. This is precisely what paragraph 12 explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workmen has been assigned to the principal employer to do a particular work.***

***We may hasten to add that this view of the law has been reiterated in 'Balwant Rai Saluja and Another v. Air India Limited and Others' [2014(9) SCC 407], as follows:***

***"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:***

***(i) who appoints the workers;***

***(ii) who pays the salary/remuneration;***

*iii) who has the authority to dismiss;*

*(iv) who can take disciplinary action;*

*(v) whether there is continuity of service; and*

*(vi) extent of control and supervision i.e. whether there exists complete control and supervision.*

*As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]." C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) However, Ms. Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL."*

38. .Another case **Bengal Nagpur Cotton Mills 2011 Vol.1 SCC 635 (para-10, 14, 16, 8 and 12)** referred to by learned counsel is also the relevant paragraphs of which are being reproduced as follows:-

"**The expression 'control and supervision' in the context of contract labor was explained by this court in International Airport Authority of India v. International Air Cargo Workers Union [2009 (13) SCC 374] thus: "If the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."**

39. The case of **Himmat Singh vs ICI India (2008) 3 SCC** Preferred to by learned counsel for Management the referred paragraphs of the judgment are being reproduced as follows:-

**"A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: "The labor court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workmen of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- ? did not have permanent work; ? were engaged in intermittent work and ? themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labor Contract Act and got benefit under the same." 9. Similarly, the Labor Court noted that contractor Rehman had applied to the administration for license under the State Contract Labor Act and considering the nature of the contract license has been granted to him. 10. In Steel Authority of India Ltd. v. Union of India &Ors. [2006(12) SC 233] it was inter-alia held as follows: "The workmen whether before the Labor Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 3 of 3 allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication." 11. In view of the factual position highlighted above and the ratio of the decision in Steel Authority's case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.**

40. Airport **Authority of India vs. IndianAirportKamgar 2011 Vol.1 L.L.J page-II Bombay para 32,33,37** referred to by learned counsel for the Management. Wherein, award allowing reference regarding same character of engagement of contract labor was held now allowed in light of facts peculiar to the case referred.

Another case **of Post Master General vs. Tutudas(2007)5 SCC 317.**

**Wherein, it has been held that illegal/improper grant of regularization to similarly situated persons does not create and entitlement to regularization on the ground of equal treatment under**

**article 14 of constitution as equality is a positive concept and can not be invoked where any illegality has been committed or where no legal right has been established.**

41. In another case **Dhampur Sugar Mills Vs Bhola Singh AIR 2005 SC page no 1790,** referred to by learned counsel for management it has been laid down that:

**completion of 240 days in continuous service may not itself be ground for regularization of service particularly in case when workmen had not been appointed in accordance with rules.**

42. The case of **Haldiya Employees Union Vs. Indian Oil Corporation 2005 CAB IC page 2078 S**C also referred to by learned counsel of which relevant paragraphs 15,16,17 & 20 specifically referred by the learned counsel are being reproduced as follows:-

"**No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. case (supra) is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations are concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages etc. and also for depositing the provident fund contributions with authorities concerned. Contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by employees of the contractor, third party or by Central or State Government Authorities. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employee of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering the proper service to the employees of the management."**

43. From perusal of these referred decisions, following settled propositions of law emerges:-

**A. The point whether the contract is sham, bogus and camouflage will arise only when the work contract which was allotted to the contractor was of non-prohibited category and also in cases where though the work contract which was allotted to the contractor was of non-prohibited category it become in prohibited category later on under the notification issued by appropriate Government under Section 10(1) of CLRA Act.**

**B. In reaching at a point whether the work contract was sham bogus and camouflage, the relevant facts for consideration will be as to firstly,who was to exercise the effective supervision and control,secondly,at whose site, the workmen were engaged, thirdly, who paid the wages and fourthly, who provided instruments and training and other facts like this is settled in the aforesaid judgments. It is also settled that what is the effective control and supervision from industry to industry and control and supervision is not only criteria for reaching at the conclusion whether the work contract was sham, bogus or camouflage also what effective control and supervision is shall differ from industry to industry fact wise.**

**Rule 25 of Contract Labour Rules 1971 reads as under:-**

**Forms and terms and conditions of licence.—**

**(2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:—**

**(i) ……..**

**(ii)……**

**(iii)……;**

**(iv)……;**

**(v) (a) in cases where the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work: Provided that in the case of any disagreement with regard to the type of work the same shall be decided by 1 [the Deputy Chief Labour Commissioner (Central)] 2 [***]; (b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by 1 [the Deputy Chief Labour Commissioner (Central)]; Explanation.— While determining the wage rates, holidays, hours of work and other conditions of services under (b) above, Hthe Deputy Chief Labour Commissioner (Central) shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments;**

**(vi) ……..**

**(d) ……..**

**(vii) ……...**

**[(viii)……..**

**[(ix) ……..**

**[x) ……...**

44. Hence in the light of these provisions, the workman even engaged by contractors are entitled to same wages and benefits at par with regular work force of the Management doing the same job which have not been paid by the contractor as this is an established fact.

45. Looking to the facts from another angle, if the agreement is void between the parties right from the very beginning and the applicant workman are entitled to be treated at par with the regular workforce of the management. They are held entitled to get the wages and benefits at par with regular work force for the period they have worked in sweeping job. The Management is under liability to fulfill its obligation in such a situation. Issue No.2 is answered accordingly.

46. In the light of the above discussion, the reference is answered as follows:-

**A. The demand of the General Secretary, M.P.Koyla Mazdoor Sabha (HMS) for regularisation of the sweeping workers named in the Schedule below on the roll of Rajnagar opercast Mines of SECL,Hasdeo Area is held to be legal and justified.**

**B. The workers are held entitled to be treated at par with the regular work force of the management with respect to the wages and other service benefits of the Management doing the same jobs for the period they have worked as sweeping workers with the management and are also entitled to retrenchment compensation as per law in case of their retrenchment.**

**C. The workman Union who has fought this battle since 1996 and before is held entitled to litigation cost quantified at Rs.50,000/- from the management of SECL.**

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 28-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1050.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यु.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 219/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2022 को प्राप्त हुआ था।

[सं. एल-22012/294/98-आई. आर- (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1050.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 219/99) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of W.C.L. and their workmen, received by the Central Government on 12/10/2022.

[No. L-22012/294/98 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/219/99**

Present: P.K.Srivastava H.J.S..( Retd)

The General Secretary
Pench Kanhan Koyla Khadan Karmachari. Sangh,
PO:Damua, District Chhindwarha(M.P.)
Chhindwarha ... Workman

**Versus**

The Dy. C.M.E.
Damua Group of WCL
PO Damua,District Chhindarwara(M.P.)
Damua, ....Management

**AWARD**

**(Passed on 26-9-2022.)**

As per letter dated 24/5/1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No.L-22012/294/98-(IRCM-II). The dispute under reference relates to:

"***Whether the action of the management of WCL Kanhan Area i.e. Sub Area Manager, Damua Sub Area of WCL, PO:Damua, District Chhindwra (MP) in not reinstating Sh. Ghanshyam singh and 12 Others/workers of Damua East(list enclosed) Project of BGML (Contractor,) Swarna Bhavan, PO: Oorgaon, Bangalore (Karnataka) is justified? If not, to what relief are the workman are entitled?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defence.

2. According to the workman Union, the workman under the reference were appointed by Management of WCL Damua colliery as contract workers for the job of driving of stone drifts which is work of prohibited category vide Notification of Central Government dated 1-2-1975, as they were engaged for more than six months, this job has been of permanent and perennial nature as defined under Section 1(5) of the Contract Labour(Regulation & Abolition) Act 1970, the engagement of contract labour in jobs of permanent and perennial nature is prohibited in Clause 11.5.1 of National Coal Wage Agreement-III followed by other National

Coal Wage Agreements. The services of these workmen were terminated by contractor after the job was over which is against law because since the contract was for an activity which is prohibited and is of permanent and perennial nature the management is involved in unfair labour practice. According to the workman Union, these workman are entitled to be treated as employees of the Management of WCL who are entitled to service benefits, accordingly, it has been prayed that setting aside their disengagement, they be held entitled to be reinstated with all back wages and benefits.

3. The case of the Management is mainly that **firstly,** the workman under reference are not identifiable**. Secondly,** the Union has no locus standi to raise the present issue as none of the members are from this Union. According to Management, it had awarded the contract after issuing a tender to M/s BGMIL, a Government of India undertaking, for the following works:-

A. Open Excavation in original soil.

B. Open Excavation in soft rock

C. Open Excavation in hard rock

D. Incline shaft sinking with partial support.

E. Incline shaft sinking.

Which is not prohibited by any notification, **secondly** the work orders were issued for six months only though they were extended from time to time, hence the work was not of permanent and perennial nature. The management has further stated that these workers are contractor workers engaged by the contractor and were dis-engaged by the contractor. Hence they cannot claim reinstatement or any benefits against the Management of WCL. Accordingly, it has been prayed that the reference be answered against the workman.

*4.* Under the orders of the Tribunal the workman has filed copies of Form-B of 13 workmen which is on record. This form-B has been prepared by the contractor. The workman Union has further filed affidavit of workman gul Mohd, Vijay Singh, Nand Kishore Gupta, Ghanshayam Singh, shivkaran Yadav, Basudev Raut, out of which witness Vijay Singh, Nand Kumar Gupta, Ghanshyam Singh, Shivkaran Yadav and Basudev Raut has been cross-examined by Management.

*5.* Management has filed affidavit of its witness Sharadchandra Jha, General Manager, HRD as his examination in chief who has been cross-examined by workman Union on Commission issued by this Tribunal.

*6.* The Contractor M/s BGMIL has been impleaded as party vide order of my learned Predecessor dated 1-2-2011. They never appeared inspite of service of registered notice on them, hence vide order dated 28-3-2013, the reference proceeded ex-parte against them.

*7.* The workman side has not filed and proved any document.

*8.* The Management has filed and proved tender notice dated 26-2-1991, work order dated 21-5-1991, revised work order dated 28-1-1994, and agreement dated 9-4-1993, license of contractor, certificate of Principal Employer, Labour payment certificates and work of completion certificates which are Exhibit M-1 to Exhibit M-8 respectively.

*9.* I have heard arguments of learned Advocate Shri Rama Shankar Yadav for the Workman Union and Shri A.K.Shashi, learned counsel for the management and I have gone through the records as well.

*10.* Perusal of record in the light of rival arguments, makes out the following issues for determination:-

**(1) Whether the workmen under Reference were engaged by the Contractor for work of prohibited Category of permanent and perennial nature?**

**(2) Whether the Management has adopted unfair labour practice by engaging contract workers in the jobs of prohibited category and permanent and perennial nature?**

**(3) If the answer to Issue No.1 and Issue No2 is Yes, is legal consequences and relief if any the workman under reference are entitled to:-**

**11. ISSUE NO.1:-**

Perusal of the statements of the workmen witness, makes it clear that these workmen have admitted that they were engaged by the contractor. They also admit that their work was supervised by the contractor though the management officials used to issue directions for work. They also admit that the payment of wages was made to them by contractor. Attendance was taken by the management employees. They have stated that they completed 240 days in continuous employment. The workman Vijay Singh stated that he worked as a fan peon in the Mines. Workman Ghanshyam Singh stated that he worked as Time Keeper in the Mines. Shivkaran Yadav

stated that he worked as a Timber Man in the Mines. Basudev Raut stated that he worked as official distributing different works to the contractor workers.

12 ON the other hand, the management witness has stated that these workers were engaged for the jobs mentioned in the work orders (referred to earlier), they were contractor's workers. They worked under the control of the contractor. They were engaged by the contractor and were paid their wages by the contractor.

13 The Notifications of Central Government dated 1-2-1975 and 21-6-1988, which are being reproduced as follows, show that the works which these workmen have stated to be doing is of prohibited category mentioned in this Notification:-

Notification of Central Government 1-2-1975 and 21-6-1988 referred to by the workman union is being reproduced as follows:-

**"NOTIFICATION(1-2-1975)**

**In exercise of the powers conferred by Sub-Section (1) of Section 10 of the Contract Labour (Regulation & Abolition)Act,1970(10 of 1970), the Central Government after consultation with the Central Board, hereby prohibits employment of contract labour in the works specified in the schedules Annexed hereto in all Coal Mines.**

**THE SCHEDULE**

**1.Raising cum selling of coal.**

**2.Coal loading and unloading.**

**3.Over burden removal and earth cutting.**

**4.Soft coal manufacturing.**

**5.Driving of stone drifts and miscellaneous stone cutting underground.**

**6.Sweeping, Cleaning, dusting and watching of buildings owned or occupied by establishments.**

**"NOTIFICATION No.S.O.2063(21-6-1988)**

**"....prohibits employment of Contract Labour in the work specified in the Schedule annexed hereto in all coal mines in the country.**

**THE SCHEDULE**

**1.Raising cum selling of coal**

**2.Coal loading and unloading.**

**3.Overburden removal and earth cutting.**

**4.Soft coke manufacturing.**

**5.Driving of stone drifts and miscellaneous stone cutting underground.**

**Provided.....**

14. As regards the second claim of the Workman Union that they were engaged in the works of permanent and perennial nature, the management documents in form of work orders, agreements revised work order and labour payments as well as work completion certificate establishes that these work continued from 1991 to 1996 i.e. for about five years. Section 1(v)(a) of the Contract Labour (Regulation & Abolition) Act,1970 is being reproduced as follows:-

**<u>Section 1(v)(a) of Contract Labour (Regulation & Abolition) Act,1970</u>.**

**Section 1(5) (a) :-It shall not apply to establishments in which work only of an intermittent or casual nature is performed.**

**(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.**

**Explanation.-For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-**

**(i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or**

**(ii) if it is of a seasonal character and is performed for more than sixty days in a year.**

15. Hence on the basis of the above discussion, it is held that in the case in hand, though the work done by these applicant workmen is not of prohibited category, but it was of permanent and perennial nature which is prohibited under Rule 11.5.1 of National Coal Wage Agreement-III, **Issue No.1 is answered accordingly.**

**16.ISSUE NO.2:-**

Section 25T and Vth Schedule of Industrial Disputes Act 1947 needs to be reproduced and is reproduced as under:-

**25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice**.

***THE FIFTH SCHEDULE :***

***Unfair Labour Practices***

***[Section 2(ra)]***

***I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS***

**(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-**

**(a) threatening workmen with discharge or dismissal, if they join a trade union;**

**(b) threatening a lock-out or closure, if a trade union is organized;**

**(c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.**

**(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,**

**(a) an employer taking an active interest in organizing a trade union of his workmen; and**

**(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.**

**(3) To establish employer sponsored trade unions of workmen.**

**(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,**

**(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;**

**(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);**

**(c) changing seniority rating or workmen because of trade union activities;**

**(d) refusing to promote workmen of higher posts on account of their trade union activities;**

**(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;**

**(f) discharging office-bearers or active members of the trade union on account of their trade union activities.**

**(5) To discharge or dismiss workmen-**

**(a) by way of victimization;**

**(b) not in good faith, but in the colorable exercise of the employer's rights;**

**(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;**

**(d) for patently false reasons;**

**(e) on untrue or trumped up allegations of absence without leave;**

**(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;**

**(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.**

**(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.**

**(7) To transfer a workman mala fide from one place to another, under the guise of following management policy.**

**(8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.**

**(9) To show favoritism or partiality to one set of workers regardless of merit.**

(10 **To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.**

**(11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.**

**(12) To recruit workman during a strike which is not an illegal strike.**

**(13) Failure to implement award, settlement or agreement.**

**(14) To indulge in acts of force or violence.**

**(15) To refuse to bargain collectively, in good faith with the recognized trade unions.**

**(16) Proposing or continuing a lock-out deemed to be illegal under this Act.**

18. In the light of the findings recorded on Issue No.1 that the contract workers were engaged for the work of permanent and perennial nature, it is held that Management has adopted unfair labour practice in the case in hand and **Issue No.2 is answered accordingly.**

**19. Issue No.3:-**

From the above discussion, it is established now that the purpose of the contract given by Management of WCL to the contractor was in fact of prohibited category in law, hence it was a void agreement according to Section 23 of the Indian Contract Act,1872 which is being reproduced as follows:-

**Section 23 of Indian Contract Act,1872 enumerates the list of void agreements which is as follows:-**

**23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.**

20. Since the purpose of the agreement was to do an act which was forbidden by law, hence the void there cannot be any agreement as per law as defined under **Section 2h of the Indian Contract Act,1872,** which is being reproduced as follows:-

**Section 2(h) defines a contract as an "agreement enforceable by law". This implies that there are two primary ingredients of a contract: an agreement and enforceability. Only a valid contract is enforceable by law, and a contract must fulfil certain conditions to be valid.**

21. Now when it is established that by engaging contract workers in a job of permanent and perennial nature in the case in hand, the Management has adopted unfair labour practice, the point here arises is the legal complication of such action. Certainly the courts and Tribunals will not sit as a mute spectator and see the law being flouted. They are under obligation in law and to authorize to pass orders to undo such a practice adopted by the Management. It is to be kept in mind that such type of litigation are unequal fights.

**22. Dugdh Udpadak Sehkari Ltd. Vs. Vinod Kumar Sharma (2011-IV LLJ** . Para 5 of this judgment is being referred to as follows:-

> **"Para-5 Labour statutes were meant to protect the employees/workmen because it was realized that the employers and the employees are not on equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the right of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."**

23. Since it has been held that any contract between the contractor and the management is void ab initio from the very beginning and the Management is indulging in unfair labour practice. It can be done only if the Management is made accountable to pay wages and benefits to these workman at par with regular employees. Keeping in view the fact that all the workman have been retrenched and they worked only for a period of five years a lump sum compensation quantified at Rs.1,00,000(Rs. One lakh) to each workman in lieu of all the claims will meet the ends of justice in my view.

24. As regards the point of identity of the workmen raised by Management the workman union has filed copies of Form B of the workmen hence this will be good identity proof to such workmen and their identity can be established from these documents. Now their identity is established. **Issue No3. is answered accordingly.**

25.IN the light of the above discussion, the reference is answered as follows:-

**A "The action of the management of WCL Kanhan Area i.e. Sub Area Manager, Damua Sub Area of WCL, PO:Damua, District Chhindwra (MP) in not reinstating Sh. Ghanshyam singh and 12 Others/workers of Damua East(list enclosed) Project of BGML (Contractor,) Swarna Bhavan, PO: Oorgaon, Bangalore (Karnataka)is held to be legal and justified.**

**B. The workmen under reference are held entitled to a lump sum compensation from management of WCL, quantified at Rs.1,00,000(Rs. One lakh) to each workman in lieu of all their claims within 30 days from the date of publication of award in official gazette failing which interest @ 6% p.a. from the date of notification till receipt.**

26. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules

P.K. SRIVASTAVA, Presiding Officer

DATE: 26-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1051.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यु.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम **न्यायालय** जबलपुर के पंचाट (संदर्भ संख्या 71/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2022 को प्राप्त हुआ था।

[सं एल-22012/28/2009-आई. आर. (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, 27 October, 2022

**S.O. 1051.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2009) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of W.C.L. and their workmen, received by the Central Government on 12.10.2022.

[No. L-22012/28/2009 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/71/2009**

**Present**: P.K.Srivastava H.J.S..( Retd)

The President,
Koyla Sharamik Sabha(HMS) Union
PO:Eklehra,
District Chhindwara(MP) ... Workman

**Versus**

The Chief General Manager,
WCL,
Pench Area,PO:Parasia,
Chhindwara(M.P.) ... Management

**AWARD**

**(Passed on 28-9-22.)**

As per letter dated 28/7/2009 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/28/2009(IR CM-II)The dispute under reference relates to:

"***Whether the demand of Koyala Sharamik Sabha (HMS) for regularizing Shri Mohd. Siraj in the Clerical Grade is legal and justified? To what relief is the workman concerned entitled?" .***"

*1.* After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

*2.* The case of the workman as stated in his statement of claim is that the workman Mohd. Siraj is the Member of the Union. He had passed his Higher Secondary Examination in the year 1996. He was appointed as a General Mazdoor and was posted to work at Thesgora under Ground Mines vide appointment order dated 3-3-1996 under Land Loser's Scheme i.e. he was provided employment against his land acquired by the management. Since he was holding the qualification required for the post of clerk, hence the Sub Area Manager Underground Mine issued the order on the basis of settlement arising out of conciliation proceedings conducted by Assistant Labour Commissioner Central, Chhindwarha between Management and Union to post the workman as magazine Clerk. He is working continuously on the said post since then but has not yet been provided benefits and grade of a Magzine Clerk nor has he been regularized on the said post inspite of several request and demands to Management in this respect. According to the workman union the workman is entitled to be regularized on the said post from 1997 and is entitled for the Grade which has been denied by the management. The action of the Management is arbitrary. Accordingly it has been prayed that holding the claim of the workman to be just and legal the workman Mohd.Siraj be held entitled to the Grade of Magzine Clerk and be regularized on that post since 1997.

*3.* The case of the management is mainly that the workman Mohd. Siraj was appointed as General Mazdoor Category-1 under Land Losers Scheme. There was a conciliation between the workman Union and management before Assistant Labour Commissioner Central Chhindwarha in which it was agreed between the parties that the workman Siraj along with four workers were to be deployed on the post shown against their name in the Office Order No.46 dated 4-2-1998. As per this order, siraj was deployed at Pit Store as Magzine Explosive Carrier. He was never deployed as a clerk in the Management Department, hence his claim for regularization and to be posted on the post of clerk is baseless. It is also the case of the management that a policy decision has been taken by the management that no further induction in clerical cadre is to be done because this cadre is in excess in the Company.

*4.* The workman has not filed any documentary evidence. The workman Mohd. Siraj has been examined as a witness by Union. He has been cross-examined by Management.

5. The Management has examined its witness Hirook Sarkar, Senior Personnel Manager. The management has also filed and proved extract of service register, appointment letter, office order dated 31-1-1998 appointing the workman Mohd. Siraj at Pit Store as Magzine Explosive Carrier, Cadre Scheme for Ministerial Staff and another Office Order is marked as Exhibit M2 to M-5 respectively. The workman witness Riyaz who filed his affidavit as Examination-in-Chief never appeared for cross-examination, hence his affidavit cannot be read in support of the workman side.

6. I have heard argument of Mr. Uttam Maheshwari, learned Counsel for Workman Union and Shri A.K.Shashi, learned counsel for the Management and have gone through the record as well.

7. The following issues arise for determination , in the case in hand:-

**(1) Whether the workman was duly appointed/deputed by management to discharge the duties at Pit Store as Magazine Clerk as claimed by him?**

**(2) Whether the workman is entitled to the relief claimed or any other relief?**

8. **ISSUE NO.1:-**

The respective case of the parties on this issue has been detailed earlier. The workman Mohd Siraj has stated in his statement on oath that he was appointed as magazine clerk in his cross-examination. He claimed that he could file his appointment order as Magazine Clerk but he never did file it. ON the other hand the management witness has stated that in fact he was appointed and was given work of Explosive Carrier in Pit Store/Magazine and the management has filed and proved this order in this respect as Exhibit M-3. Hence, the case of Management in this respect appears more reliable because it is supported by documents. Accordingly, it is held that the workman Union could not prove that the workman Mohd. Siraj was ever appointed/deputed to work as Magzine Clerk and **Issue No.1 is answered accordingly.**

9. **ISSUE NO.2:-**

In the light of the finding recorded on Issue No.1 the workman Siraj is held entitled to no relief. **Issue No.2 is answered accordingly**.

10. On the basis of the above discussion, following award is passed:-

A. ***The demand of Koyala Sharamik Sabha (HMS) for regularizing Shri Mohd. Siraj in the Clerical Grade is held to unjustified.***

B. **The workman is held entitled to no relief.**

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 28-9-22

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1052.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यु.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 87/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2022 को प्राप्त हुआ था।

[सं. एल-22012/64/2014.आई. आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1052.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2014) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of W.C.L. and their workmen, received by the Central Government on *12/10/2022*.

[No. L-22012/64/2014 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/87/2014**

**Present:** P.K.Srivastava H.J.S..( Retd)

The General Secretary
Joint Koyla Mazdoor Sangh(AITUC
Near Maan Petrol Pump,
Parasia, Chhindwara(M.P.) ... Workman

**Versus**

The Chief Medical Officer(Incharge)
Central Hospital
Badkhuhi, WCL,Pench Area,
Tehsil Parasia,Chhindwara(M.P.) ... Management

**AWARD**

**(Passed on 20-9-22.)**

As per letter dated 7-11-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/64/2014(IR(CM-II). The dispute under reference relates to:

"***Whether the action of the management of Western Coal Fields Limited pench Shetra Parasia Jilla Chhindwarha dwara Shri Santosh BAthav e.c.g. Technician T & S Grade D ko padounnatir denank 31-3-2011 se e.c.g. Technician T & S Grade C ke padh par karne pashchath varshik vetan vridhi No. CIL/C-5BJBCCI/I.I.No.26 ke aadhar par padan na karna nyaysangat hai?Yadi nahi to kamgar kya anutosh paane ka adhikar hai? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was initially appointed as General Mazdoor. He is working as ECG Technician at Central Hospital Barkui since 2010. He was granted promotion in the year 2010-2011 on the post of ECG Technician T& S Grade-C on 31-3-2011. He assumed charge on promotional post since 1-4-2011. He was not granted annual increment after promotion in that year which he was entitled to. He was granted yearly increment in the month of August every year before his promotion. This benefit was not granted to him in the year 2011 which is in violation of National Coal Wage Agreement which entitled every workman to get an annual increment every year from 1st of January to 31st of December. Accordingly, it has been prayed that holding the action of Management against law the workman be held entitled to annual increment in the year 2011.

3. The case of the Management is mainly that the workman Santosh Bathav was initially appointed as General Mazdoor. He is working as ECG Technician in Central Hospital Badkui since 2010. He was promoted from ECG Technician T & S Gr-D to T& S Grade-C w.e.f. 31-3-2011. He submitted his joining report on the promotional post on 1-4-2011. According to the Management the effect of promotion would be from the date of promotion and the annual increment will also be given accordingly. JBCCI which is authorized to issue Implement Instruction regarding implementation of provisions of National Coal Wage Agreement has issued Circular No.329 dated 1-12-2010 with regard to I.I.No..24. The relevant portion of the circular is as follows:-

**NATIONAL COAL WAGE AGREEMENT-VIII**

**IMPLEMENTATION INSTRUCTION N0.24/329**

**The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director. The Chairman-cum-Managing Director. ECL BCCL CCL WCL SECL NCL MCL CMPDIL Sanctoria Dhanbad Ran chi Nag pur Bilaspur Singrauli Sambalpur Ranchi Sub : GRANT OF FOUR PROMOTIONS DURING THE SERVICE SPAN OF 30 YEARS A Sub-Committee of Joint Bi-partite Committee for the Coal Industry {JBCCIVIII) under clause 13.5.1 of NCWA-VIII was constituted to examine and submit the recommendation on the fol lowing issue :-**

**(a) Grant of four promotions during the service span of 30 years;**

**(b) Date of Annual Increment;**

**(c) Incremental benefit on promotion. Six meetings of the above Sub-Committee have been convened but no unanimous consensus arrived at.**

**Therefore, the above issues were placed before Standardi.zation Committee of JBCCI-VIII in its 51 h meeting held at New Delhi on 19111 August, 2011 and finally placed before the first meeting of JBCCI-IX held at New Delhi on 20th & 21 51 August, 2011 for deliberation. After detailed deliberation on the above subject matter, a scheme was mutually agreed and signed by the Management Representatives as well as CTUs Representatives as under :-**

**This scheme will be titled as SERVICE LINKED PROMOTION (SLP) to the nonexecutives with reference to Clause 13.5.1 of NCWA-VIII. However, Piece Rated will continue to get one SPRA under this scheme.**

**APPLICABILITY: Under this scheme, one promotional increment @ 3% of the existing basic in the grade/category will be allowed to the employees who remain in the same category/grade for a period of 7/8 years (Underground/Surface non-executive employees respectively) and will be promoted in the next higher category/grade. However, such employee will continue to do their existing jobs as per their designation.**

**-:: 2 ::- ELIGIBILITY: a) Daily Rated and Monthly Rated employees who have remained in the same category/grade for a period of 7/8 years (Underground/Surface non-executive employees respectively) would be promoted to the next higher category/grade as mentioned in the cadre scheme. Such promotions wi ll be undertaken once in a year i.e., on 151 January. b) The employees excluding Piece Rated, working under such categories/designations where cadre scheme has not yet been prepared will also be eligible for such promotions in the just next higher category, after completion of 7/8 years (Underground/Surface non-executive employees respectively) in the same category. c) Monthly Rated employee in T&S Grade A-1 and Daily Rated employees in Excavation Special Category who remain in the same category/grade for more than 7/8 years (Underground/Surface non-executive employees respectively) will get one increment as SLI in their existing grade/category. Such incremental benefit will be paid to them once in a year on 1st January. d) Employees who have not been granted minimum four promotion including SLP/SLU/SLI in their service span will be given one increment in lieu of SLP on 151 January of the retiring year.**

**GENERAL CONDITION:**

**i) After introduction of the above scheme, clause No.2.11 .0 and 2.11.1 under NCWA-VIII will be deleted and present scheme will substitute the clause No.2.11 .0 & 2.11 .1 of NCWA-VIII. ii) Efforts will also be made to finalise the cadre scheme and proper designation in such categories where there is no cadre scheme at all and to create avenues of four promotions for such cadre where there are two or three stages of promotion. iii) This scheme will be applicable in NCWA-VIII.**

**ii) SAVINGS: Matters not specifically covered in this scheme, shall be decided in the meeting of Standardisation Committee, which shall be finaL**

4. J.B.C.C.I has further issued circular Implementation Instruction No.26 dated 1-12-2011, the relevant portion of which is reproduced as follows:-

**NATIONAL COAL WAGE AGREEMENT-VIII**

**IMPLEMENTATION INSTRUCTION N0.26**

**The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, The Chairman-cum-Managing Director. The Chairman-cum-Managing Director, The Chairman-cum-Managing Director, ECL BCCL CCL WCL SECL NCL MCL CMPDIL Sanctoria Dhanbad Ranchi Nag pur Bilaspur Singrauli Sambalpur Ranchi**

**Sub:INCREMENTAL BENEFIT ON PROMOTION A Sub-Committee of Joint Bi-partite Committee for the Coal Industry (JBCCIVIII) under clause 13.5.1 of NCWA-VIII was constituted to examine and submit the recommendation on the following issue :- a) Grant of four promotions during the service span of 30 years; b) Date of Annual Increment; c) Incremental benefit on promotion. Six meetings of the above Sub-Committee have been convened but no unanimous consensus arrived at.**

**Therefore. the above issues were placed before Standardization Committee of JBCCI-VIII in its 5th meeting held at New Delhi on 19th August, 2011 and finally placed before the first meeting of JBCCI-IX held at New Delhi on 20th & 21 st August, 2011 for deliberation. After detailed deliberation on the above subject matter, a scheme was mutually agreed and signed by the Management Representatives as well as CTUs Representatives as under :- i) One increment i.e., 3% of the existing basic will be allowed on promotion as is done in normal course of promotion. ii) Such increment shall be in addition to the annual increment. iii) This will be effective from the 1st April, 2011 .**

**5.** The case of the Management is that his pay has been fixed in accordance with these circulars and there is no anomaly in his pay fixation. It is further the case of the management that on promotion, he was given benefit of 3% of basic pay w.e.f. 1-4-2011. Thereafter his next annual increment would be due on 1-4-2012. He was given next increment from 1-4-2012, hence his claim for increment in the month of August-2011 which he was getting before promotion is not tenable because he was promoted earlier. Accordingly, the Management has prayed that the reference be answered against the workman.

**6.** The workman has filed rejoinder wherein he has mainly reiterated the case.

**7.** In evidence the workman has filed photocopy Office order dated 31-3-2011, joining report dated 1-4-2011, last pay certificate before promotion National Coal Wage Agreement-VII Implement Instruction No.24 Circular dated 12-4-2013, Circular dated 12-4-2013, circular dated 19-6-2013 and 12-5-2013 are admitted and marked as Exhibit W1 to W8 respectively.

**8.** The workman Santosh Bathav has examined himself on affidavit. He has been examined by management on his affidavit. The Management has filed affidavit of its witness P.Subramani, Senior Manager Personal, who has been examined by Union Representative for workman.

9. I have heard arguments of Union Representative Mr. Mahendra Chhaterjee and the workman who was present in person. I have also heard argument of learned counsel for the management and have gone through the record.

10. **The reference itself is the issue for determination in the case in hand**.

11. As it is established that basic facts are not disputed between parties. The point remains to be decided is only whether the workman is entitled to yearly increment in the month of August-2011 which he was getting before his promotion in April-2011. Relevant provisions regarding circular have been mentioned earlier which are referred to by the Management in its written statement of defence. The circular admitted by workman also do not provide granting of annual increment which an employee was granted before his promotion to him even after his promotion. It is also not disputed between the parties that he was granted increase in salary from the date he joined on the Post Office Promotion on 1-4-2011. Since he was given increase in salary due to promotion, naturally he cannot take benefit of yearly increment which he was getting earlier before his promotion and from the date of his next yearly increment will be 1-8-2012. In the light of these facts and discussion, the action of the Management cannot be faulted in law or fact and the reference requires to be answered accordingly.

12. On the basis of the above discussion, following award is passed:-

**A. The action of the management of Western Coal Fields Limited as mentioned in the reference is held to be just the proper .**"

**B. The workman is held entitled to no relief.**

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 20-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1053 .**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यु.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 279/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2022 को प्राप्त हुआ था।

[सं. एल-22012/384/98-आई. आर- (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1053**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 279/99) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of W.C.L. and their workmen, received by the Central Government on 12/10/2022.

[No. L-22012/384/98 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/279/99**

**Present**: P.K. Srivastava H.J.S..( Retd)

The General Secretary,
Bharatiya Koyla Khadan Mazdoor Sangh(BMS)
PO:Parasia, District Chhindwara(MP) ... Workman

**Versus**

The General manager,
WCL Kanhan Area,
PO:Dungaria,
District Chhindwara(M.P.) ... Management

**AWARD**

**(Passed on 26-9-22.)**

As per letter dated 3/8/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/384/98/IR(CM-II). The dispute under reference relates to:

"***Whether the action of the management of WCL, Kanhan Area i.e. Generalmanager, WCL,Kanhan Area in not reinstating Sh. Azizulla S/o Waliulla and 127 Others(Workers of Damua East project of BGML(Contractor)Swarna Bhavan,PO Oorgaon, Bangalore, Karnataka ) is legal and justified?If not, to what relief is the workmen (as per the list enclosed) are entitled .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defence.

2. According to the workman Union, the workman Azizullah and 127 Others mentioned in the Schedule to the Reference were employed by General manager WCL, Kanhan Area through their contractor BGMIL at Damoh East colliery vide work order dated 21-3-1991. The jobs mentioned in the said work order are similar thus carried out by the permanent departmentalized workers because it is of permanent and perennial nature. The Central Government has issued a notification on 21-6-1988 prohibiting employment of contractors labour on jobs continued for more than six months. According to the workman Union the workman were engaged continuously since 1991 to 1996 i.e. period of four years and worked for 240 days in every year. They were examined medically by management, imparted training by Management and issued training certificate to them. They were never paid the wages admissible to the regular work force of the Management doing the same job of permanent and perennial nature. Their services were terminated by the contractor M/s BGMIL by simply posting a general notice from 10-12-1996. Accordingly, it has been prayed that holding the action of management of WCL against law, the workman be held entitled to be reinstated with full wages and benefits.

3. The case of the management is mainly that, firstly the papers of claimants are not given hence they cannot be identified. Secondly the contractor was a necessary party to the dispute. He was not made the necessary party. It is further the case of the management that the work allotted to the contractor for getting it done by the contract labour is not that of prohibited category, it is not of permanent and perennial nature. The contractor itself is government organization. The work was allotted for the following jobs:-

A.Open Excavation in original soil.

B.Open Excavation in soft rock

C.Open Excavation in hard rock

D.Incline shaft sinking with partial support.

E.Incline shaft sinking.

According to the management if the contractor completed the contract and terminated their services , thus according to the Management, there was no master servant /employer workman relationship between the applicant workman and Management of WCL. The workman were appointed by the contractor and was paid by the contractor, hence they are entitled to no claim from the Management of the WCL..

4. The workman Union filed its rejoinder wherein it reiterated its case and further submitted that these workmen were members of CMPF. Their provident fund were deducted and was deposited. They have filed list of such workers.

5. During the proceedings, the contractor was impleaded as a party vide order of my learned Predecessor dated 16-8-2016 it was served a registered notice. They never appeared, hence the reference proceeded ex-parte against the contractor of BGMIL vide order of my learned Predecessor dated 20-1-2017.

6. The workman Union has examined as many as seven witnesses. They are workman Azizullah, Tohid , Kahaiya, Rajendra, Irshad, Ashok, Dinesh. Affidavit of other witnesses have also been filed as their Examination in chief but they never appeared for cross-examination.

7. The Management has examined its witness Hansraj, Senior Manager who has been examined by workman inspite of opportunity given. The management has further examined another witness Radheshayam, Manager who has been cross-examined by workman.

8. The workman has filed and proved work order dated 21-3-1991 issued by the management to the contractor Exhibit W-1.The Management has also filed and proved tender notice No.73/91, work order dated 21-3-1991, licence granted to the contractor and labour payment certificates Exhibit M-1 t M-7.

9. I have heard arguments of learned counsel Shri R.S.yadav for the workman union and Shri A.K.Shashi learned counsel for the Management. I have gone through the record as well:-

**(1) Whether the workman under the reference were engaged as contract workers for the work of permanent and perennial nature and of prohibited category.?**

**(2) Whether the management of WCL is guilty of unfair labour practice.?**

**(3) If the answer to Issue No.1 and 2 is yes, what is the legal complications and the relief to which the workman are entitled to?**

10. **10. ISSUE NO.1:-**

As submitted by learned counsel for the management, the works allotted to the contractor is not of prohibited category as per Central Government notification dated 21-6-1988.

11. Considering the works for which the contract was entered into and was awarded to the contractor mentioned earlier this work is not mentioned in prohibited category, hence the contract cannot be said to be in violation of Notification-1988 as the work allotted vide the work order was not of prohibited category in the said notification. As regards the second allegation of the workman union that the work was of permanent and perennial nature, it is undisputed that the worked in 1991. Contracts and work orders were allotted to the same contractor for every six months are contractors were revised /renewed and this process continued till 1996 for the period of about five years. IN the light of Section 1(5) of CLRA Act,1970, since the work continued for more than six months it shall be deemed to be of permanent and perennial nature which is prohibited under Rule 11.5.1 and 11.5.2 of NCWA 3 /4 which are being reproduced as follows:-

**11.5.1 NCWA-III:- Industries should not employ labours through contractors or engage contractors labour on jobs of permanent and perennial nature."**

**11.5.2 NCWA-III:- The jobs which have been and are being taken by regular employees shall be continued to be taken by the Regular Employees themselves.**

12. Another case of workman union is that they worked on the sites owned by the management under the control and supervision of management and they were given training by Management as wells as instruments was also supplied by management, these facts if seen in the light of the facts that the work continued for almost five years makes it clear that the contract was nothing but a sham transaction, camouflage to deprive the workman from getting their legitimate right in law. I have gone through the statement of workmen witnesses and their cross-examination, though they have corroborated the case of the workman Union on this point as mentioned above, every witness has admitted that he was appointed by the contractor and wages were paid by the contractor hence in the light of the above discussion, it is held that since the workman were employed and

work for almost five years in the same job at the same working site, they were engaged in job of permanent and perennial nature. **Issue No.1 is as answered accordingly.**

13. **ISSUE NO.2:-**

Section 25T and Vth Schedule of Industrial Disputes Act needs to be reproduced and is reproduced as under:-

**25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice**.

*THE FIFTH SCHEDULE : Unfair Labour Practices*

*[Section 2(ra)]*

*I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS*

**(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-**

**(a) threatening workmen with discharge or dismissal, if they join a trade union;**

**(b) threatening a lock-out or closure, if a trade union is organized;**

**(c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.**

**(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,**

**(a) an employer taking an active interest in organizing a trade union of his workmen; and**

**(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.**

**(3) To establish employer sponsored trade unions of workmen.**

**(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,**

**(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;**

**(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);**

**(c) changing seniority rating or workmen because of trade union activities;**

**(d) refusing to promote workmen of higher posts on account of their trade union activities;**

**(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;**

**(f) discharging office-bearers or active members of the trade union on account of their trade union activities.**

**(5) To discharge or dismiss workmen-**

**(a) by way of victimization;**

**(b) not in good faith, but in the colorable exercise of the employer's rights;**

**(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;**

**(d) for patently false reasons;**

**(e) on untrue or trumped up allegations of absence without leave;**

**(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;**

**(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.**

**(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.**

**(7) To transfer a workman mala fide from one place to another, under the guise of following management policy.**

**(8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.**

**(9) To show favoritism or partiality to one set of workers regardless of merit.**

**(10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.**

**(11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.**

**(12) To recruit workman during a strike which is not an illegal strike.**

**(13) Failure to implement award, settlement or agreement.**

**(14) To indulge in acts of force or violence.**

**(15) To refuse to bargain collectively, in good faith with the recognized trade unions.**

**(16) Proposing or continuing a lock-out deemed to be illegal under this Act.**

14. In the light of the findings recorded on Issue No.1 that the contract workers were engaged for the work of permanent and perennial nature, it is held that Management has adopted unfair labour practice in the case in hand and **Issue No.2 is answered accordingly.**

**15.Issue No.3:-**

From the above discussion, it is established now that the purpose of the contract given by Management of WCL to the contractor was in fact of prohibited category in law, hence it was a void agreement according to Section 23 of the Indian Contract Act,1872 which is being reproduced as follows:-

**Section 23 of Indian Contract Act,1872 enumerates the list of void agreements which is as follows:-**

**23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.**

16. Since the purpose of the agreement was to do an act which was forbidden by law, hence the void there cannot be any agreement as per law as defined under **Section 2h of the Indian Contract Act,1872,** which is being reproduced as follows:-

**Section 2(h) defines a contract as an "agreement enforceable by law". This implies that there are two primary ingredients of a contract: an agreement and enforceability. Only a valid contract is enforceable by law, and a contract must fulfil certain conditions to be valid.**

17. Now when it is established that by engaging contract workers in a job of permanent and perennial nature in the case in hand, the Management has adopted unfair labour practice, the point here arises is the legal complication of such action. Certainly the courts and Tribunals will not sit as a mute spectator and see the law being flouted. They are under obligation in law and to authorize to pass orders to undo such a practice adopted by the Management. It is to be kept in mind that such type of litigation are unequal fights.

18. Since it has been held that any contract between the contractor and the management is void ab initio from the very beginning and the Management is indulging in unfair labour practice. It can be done only if the Management is made accountable to pay wages and benefits to these workman at par with regular employees. Keeping in view the fact that all the workman have been retrenched and they worked only for a period of five years a lump sum compensation quantified at Rs.1,00,000(Rs. One lakh) to each workman in lieu of all the claims will meet the ends of justice in my view.

**19. Dugdh Udpadak Sehkari Ltd. Vs. Vinod Kumar Sharma (2011-IV LLJ** . Para 5 of this judgment is being referred to as follows:-

**"Para-5 Labour statutes were meant to protect the employees/workmen because it was realized that the employers and the employees are not on equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However this new technique of**

**subterfuge has been adopted by some employers in recent years in order to deny the right of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."**

20. As regards the point of identity of the workman raised by Management the case of workman Union in its rejoinder is that their provident fund have been deducted and deposited with CMPF. The documents relating to deduction of these provident fund will be good identity proof to such workmen and their identity can be established from these documents. **Issue No3. is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

**A.** **The action of the management *WCL, Kanhan Area i.e. General manager, WCL, Kanhan Area in not reinstating Sh. Azizulla S/o Waliulla and 127 Others(Workers of Damua East project of BGML(Contractor)Swarna Bhavan,PO Oorgaon, Bangalore, Karnataka ) is held to be legal and justified.***

***B.*** **The workmen are held entitled to a lump sum compensation quantified at Rs.1,00,000(Rs. One lakh) to each workman in lieu of all the claims within 30 days from the date of publication of award in official gazette failing which interest @ 6% p.a. from the date of notification till receipt.**

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 26-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1054.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 35/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/5/2019.आई. आर. (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1054.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2019) of the Central Government Industrial Tribunal-cum-Labour Court, JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on *12/10/2022.*

[No. L-22012/5/2019 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/35/2019**

**Present:** P.K.Srivastava H.J.S..( Retd)

Shri Nathulal Pandey
General Secretary
Koyla Mazdoor Sabha(HMS)
Right Town Jabalpur ... Workman

**Versus**

The General Manager,
SECL Chirmiri Area,
PO-Chirmiri District
Korea(Chhattisgarh) ... Management

**AWARD**

**(Passed on 21-9-2022)**

As per letter dated 18/2/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/5/2019-IR(CM-II). The dispute under reference relates to:

"***Whether the action on the part of the management of Chirmiri UG Sub Area of SECL Chirmiri area in dismissing Shri Madho S/o Nitya, Ex-coupling Man on the same date of retirement from service i.e. on 31-8-2017 on impersonation ground causing prejudice to the workman is appropriate and justified? If not, what relief the dismissed workman is entitled to espoused by the General Secretary of Koyla Mazdoor Sabha (HMS) .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Inspite of service of notice on the workman he never appeared. He did not file any written statement of claim. The management appeared and filed its written statement of defence .

2. The Management in its statement of defence has stated that Madho son of Nitya was appointed as Casual Piece Rated Worker/Time Rated worker through interview for temporary period of three months and was posted in Chirmiri colliery underground mine vide letter of WCL dated 29-9-1982 issued by then Chief Mining Engineer. He was absorbed to the post of General mazdoor Category-1 w.e.f. 1-10-1983. He was advised to produce his original registration card with Employment Exchange which was produced by him at the time of interview. The management received a complaint with an allegation that he got employment in the company on the basis of false information. The sub-Area Chirmiri was requested for inquiry. A letter was sent by Management to the Superintendent of Police, District Chhatarpur for verification regarding the identity of the employee by affixing his photograph. The Superintendent of Police, District Chhatarpur informed vide his letter that the person claiming to be Madho before the management was in fact Kunnu son of Nallu of Village Jamuna, Police Station Purshottampur, District Ganjam, Odisha. The Management decided to conduct an inquiry and a charge sheet under Clause 26.9 and 26.22 of Certified Standing Orders of Company was issued to the workman. He submitted his reply which was unsatisfactory, hence the Management decided to conduct an inquiry. Notice of inquiry was sent to the workman on his official and permanent address and was served. He never participated in the inquiry. The Inquiry officer collected evidence and sent his Inquiry Report on 2-8-2017 holding the workman guilty of the aforesaid charges. He was issued a show cause notice on 28-8-2017 before awarding punishment which was served on him but he did not file any reply, hence the management passed the order of punishment dismissing him from services.

3. During the proceedings, the workman did not file any evidence. The case proceeded ex-parte against the workman. The Management filed affidavit of its witness Harendra Singh Rajput, Manager Personnel has corroborated the case of the management and proved the inquiry papers. I have heard arguments of learned counsel for management Shri A.K.Shashi. None appeared for the workman. I have gone through the record.

4. Perusal of record in the light of reference reveals that the following points are to be looked into in the case in hand that :-

**1. Whether the inquiry conducted was legal and proper?**

**2. Whether the charges stood proved from the inquiry?**

**3. Whether the punishment is proportionate to the charge?**

5. The burden to prove Point No.1 is on the workman in which he has filed by not discharging this burden. From the evidence of Management evidence and inquiry papers I do not find any illegality in the Inquiry. Charges are also held proved from the inquiry. Hence keeping in view the gravity of the charges, the dismissal of the workman also appears proportionate to the charges. Since his initial appointment was illegal, he is also held not entitled to any relief. The Reference is answered accordingly.

6. On the basis of the above discussion, following award is passed:-

**A. The action of the management of Chirmiri UG Sub Area of SECL Chirmiri area in dismissing Shri Madho S/o Nitya, Ex-coupling Man on the same date of retirement from service i.e. on 31-8-2017 on impersonation ground causing prejudice to the workman is held to be proper and justified.**

**B. The workman is held entitled to no relief.**

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 21-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1055.**—औद्योगिक विवाद अधिनियम, 1947 1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह-श्रम न्यायालय** जबलपुर के पंचाट **(संदर्भ संख्या 102/2017)** को प्रकाशित करती है, जो केन्द्रीय सरकार को 12**/10/2022** को प्राप्त हुआ था।

[सं. एल-22012/24/2017-आई. आर. (सी-एम II)]

**राजेन्द्र सिंह, अवर सचिव**

New Delhi, the 27th October, 2022

**S.O. 1055.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 102/2017)** of the **Central Government Industrial Tribunal-cum-Labour Court JABALPUR** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on 1**2/10/2022.**

[No. L-22012/24/2017 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

NO. CGIT/LC/R/102-2017

Present: P.K. Srivastava, H.J.S..( Retd)

The Mahamantri

Koyla Mazdoor Panchayat

B/36-Store Colony,Amradandi,

Amlai Colliery

District Shahdol (M.P.) ...Workman

**Versus**

The Chairman cum, Managing Director

SECL, SEEpat Road,

Bilaspur (Chhattisgarh)

2.The General Manager

Sohagpur Area

SECL, PO Dhanpur,

District Shahdol (M.P.)

3.The Sub Area Manager

Amlai OCM, SECL Sohagpur Area

P.O.Amlai, District Shahdol

Shahdol (M.P.) ...Management

**AWARD**

**(Passed on 28-9-2022)**

As per letter dated 4-8-2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/24/2017 IR(CM-II). The dispute under reference relates to:

> "**Whether the action of the management of SECL in changing the date of birth of Shri Suryabali Prasad Dubey from 24 years as on 8-5-1981 to 31 years as on 8-5-81 in the official record and supeannuating him on 30-6-2014 on the basis of revised date of birth is just, fair and legal, of, to what relief the concerned person is entitled to and fro which date? .**"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was initially appointed on 8-5-1981 at Amlai Colliery as Badli Tub Loader. His Form-B was submitted at the time of appointment wherein his date of birth was mentioned in column No.4 as 24years as on 1-1-1981 since then he has been representing to the Management that on the basis of this entry in Form-B his date of superannuation will be June-2017. He preferred a writ petition before Hon. High Court of M.P. Writ Petition No.6422/2010 which was finally disposed by Hon. High Court directing the respondent Management to conduct a fresh meeting of Age Determination Committee (in short referred to as A.D.C.) granting the workman opportunity of hearing and to consider all the documents produced and to draw the report with respect to the age of the petitioner. The Age Determination Committee decided the date between 55 to 60 years on the date of examination on the basis of his radiological examination without giving a finding that his age 24 years is on 8-5-1981 on the date of his first joining as mentioned in Form-B was wrong. Accordingly the Management wrongly fixed his date of birth as 1-7-1954 to be treated as correct as it was mentioned in the documents maintained by management which is against law. The workman superannuated on 1-7-1954 to be treated as correct as it was mentioned in documents maintained by Management which is against law. The workman superannuated on 1-7-2014 on its wrong assumption regarding his date of birth which is against law. The workman, therefore, requested that holding the action of Management against law, the workman be held entitled to be reinstated and to continue in service till June-2017 with all back wages and benefits.

3. The case of the Management is mainly that the Age Determination Committee has rightly held his date of birth as 1-7-1954 on the basis of Report of Radiological examination and other documents relating to his date of birth in the light of Implementation Instruction No.37 and No.76. According to the Management, this action is not against law. The Management has prayed that the reference be answered against the workman.

4. The workman has filed photocopy of form-B Register, order of Hon,. High Court, letter of Management to worker intimating the decision of Age Determination Committee, form-O prepared under rule 29-B on the basis of Radiological examination. Proceedings of Age Determination Committee which are Exhibit W-1 to W-5 respectively. The workman has further filed order of Hon'ble High Court in Writ Petition No.11120/2014, the order of Writ Appeal No.61/2015 arising out of order in W.P.No.11120/2014. Copy of last pay certificate which are Exhibits W7 to W9 respectively. The workman has examined himself on oath and has been cross-examined. The management has filed copy of I.I.No.37 and I.I,.No.76, copy of Form-B register, the service extracts, Form PS-3 and PS-4, report of the Age Determination committee which are Exhibits M1 to M11 respectively. The management did not examine any witness.

5. I have heard arguments of learned counsel for the workman and Management and have gone through the record as well.

6. The following issue arises after perusal of record in the light of rival arguments:-

**"Whether the finding of the Age Determination Committee constituted in the light of order of Hon. High Court regarding to the age of the workman and action of Management in fixing the date of birth of the workman as 1-7-1954 and superannuating him on the basis of this date of birth is correct in law and fact?"**

7. Learned Counsel for the management has submitted that there is a prescribed procedure regarding settling of dispute regarding the date of birth of workman mentioned in the Implementation Instruction No.76. He further submits that his date of birth has been fixed taking into consideration the consistent entries in the service records maintained by the Management and duly acknowledge by workman by way of putting his signature and report of medical board conducted in this respect. Learned Counsel for the Management has submitted that according to the Medical Board his age was between 55 to 60 years at the time of cross-examination which corresponds with his date of birth 1-7-1954 recorded in his service record. According to which the workman could be of 60 years. Learned Counsel further submits that there is no illegality in the

procedure and finding of the Age Determination Committee and action of Management in accepting the report of the Age Determination Committee and superannuating the workman on this basis.

8. Learned Counsel for the workman has submitted that the Medical Board submitted its opinion regarding the age of the workman which was based on ossification test. His this opinion is to be corroborated by other evidences. The Medical board was of the opinion that the workman was between 55 to 60 years on the date of examination. The Management took the maximum age recommended which is wrong and unlawful. The proper course for the Age Determination Committee should have been to fix his age in between 55 to 60 years that might be 57.5 years approximately. Learned Counsel has referred to decision of Hon. High Court of Delhi, **Shweta Gulati Vs, Government of Delhi** (2018) SSC Online Delhi 10448 and **Ramsumer Singh Vs. Prabhat Singh** (2009) 6 SCC 681 wherein it has been laid down that opinion of Medical Board will be preferred only when the date of birth certificate is not from school. As submitted by learned counsel for the workman, the first record Form-B in it the age was mentioned as 24 years at the time of joining. It was changed later on in the service records prepared thereafter to 1-7-1954. The workman has been agitating against this anomaly treating his age as 24 years at the time of first appointment on 8-5-1981. He would have been of 54years of age in the year 2014.

9. Implementation Instruction No.76 relates to dispute regarding date of birth of employees at the time of first appointment is being reproduced as follows:-

> **(B) Review determination of date of birth in respect of existing employees.**
>
> **(i)(a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.**
>
> **(i)(b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic.**
>
> **Provided that where both documents mentioned in (1)(a) and (i)(b) above are available, the date of birth recorded in (i)(a) will be treated as authentic.**
>
> **(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board.**
>
> **(C) Age Determination Committee/Medical Board for the above will be constituted by the Management. IN the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded in the records of the company, namely Form B register, CMPF Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the Management for determination of age".**

10. It is also established that the age of the workman as 24 years which was recorded in Form-B for the first time was on the basis of information furnished by him only and not on the basis of documents as this entry indicates. The report of the Age Determination Committee reveals that the workman did not produce any document regarding his date of birth before the Committee. The Committee examined the other documents Exhibit M4, M5 to M7 as mentioned above wherein his date of birth was considered consistently recorded as 1-7-1954 on the basis of this date of birth he was of 60 years of age at the time of examination of his case by the Age Determination Committee which corresponds to the expert opinion of the Medical Board, hence in the light of these facts, the decision of the Age Determination Committee with respect to the date of birth of the

workman did not suffer any illegality. Accordingly, the action of the Management in superannuating the workman, treating his date of birth 1-7-1954 is not justified in law or fact. Issue is answered accordingly.

11. On the basis of the above discussion, following award is passed:-

**A. The action of the management of SECL in changing the date of birth of Shri Suryabali Prasad Dubey from 24 years as on 8-5-1981 to 31 years as on 8-5-81 in the official record and supeannuating him on 30-6-2014 on the basis of revised date of birth is held to just fair and legal**

**B. The workman is held entitled to no relief.**

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 28-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1056.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय** जबलपुर के पंचाट **(संदर्भ संख्या 209/95)** को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/77/92-आई. आर. (सी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1056.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 209/95)** of the **Central Government Industrial Tribunal-cum-Labour Court JABALPUR** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on 1**2/10/2022.**

[No. L-22012/77/92 – IR (C-II)]

RAJENDER SINGH, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/209/95

Present: P.K. Srivastava, H.J.S..( Retd)

The General Secretary,
M.P.K.M.S.(H.M.S.) Post South
Jhagrakhand Colliery,
District Surguja ... Workman

**Versus**

The Chief General Manager
Hasdeo Area,
S.E.C.L.
Post South Jhagrakhand Colliery
District Surguja ... Management

**AWARD**

**(Passed on 22-9-2022)**

As per letter dated 13/12/1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-22012/77/92-IR(C-II). The dispute under reference relates to:

"**Whether the action of the management of SECL, Hasdeo Area in not departmentalising the Tiber Saw Mill Workers engaged through a contractor is legal and justified? If not, what relief the concerned workmen (list enclosed are) entitled to? .**"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. According to the workman union the workman Govind and 60 Others in the list enclosed with the reference have been working as Saw Mill workers in different units of Hasdeo Area since 1985. The dispute regarding regularization of their services was raised before the Assistant Labour Commissioner (Central). The management did not care to appear before the Assistant Labour Commissioner, hence a failure report was sent to the Ministry by the Assistant Labour Commissioner on 4-3-1992 firstly declaring to transfer the dispute for adjudication vide its letter dated 3-4-1992. The Union preferred a Writ Petition before Hon. High Court of M,.P. in W.P.No.2791/1992 which was decided by Hon'ble High Court vide order dated 26-4-1994 and it was under the directions of Hon'ble High court, the reference was made by Government of India to this Tribunal. The management of Hasdeo Area engaged these workmen through contractors except in Bijuri Colliery Saw Mills. They used to work in the saw mill for making timbers in suitable size for mining purposes everywhere except Hasdeo area this job was done by regular workers of SECL as this is the job directly related to mining and is of permanent and perennial nature. The action of the management in engaging these workman through contractors in Saw Mills is in violation of terms of National Coal Wage Agreement,1967 para 11.5.1 which prohibits engagement of labour through contractor or engaging contractors labour on job of permanent and perennial nature, hence the contractors and the contract agreement is nothing but a sham transaction to deny the workman of their legitimate rights regarding wages and other benefits which is a illegality committed by the Management. It is further the case of the Management that these workman have been in continuous engagement of Management for more than 240 days in every year. They worked under the control and directions of management in the Mines premises. They worked for the profit and business of the management. The nature of the workman performed by them is the same as that of the regular employees of the management in Saw Mills in other areas where it is done by other employees getting Category-II wages. It is also the case of the workman Union that similarly placed workers in Suhagpur Area engaged through contractors have been regularized and given all benefits by the same management under a settlement reached between the management and the Union on 13-12-1984 acted upon between the parties on 19-9-1987 but the same benefit is denied by the Management to the workman in Hasdeo Area. According to the workman Union this action of Management is thus arbitrary and is in violation of Article 14 and 16 of the Constitution of India. This unfair labour practice adopted by management to deny the workman under reference of their legitimate rights. The management is under obligation to prepare statutory records as per Mines Act,1952 namely form-B, Attendance register which is in possession of management. Accordingly it has been prayed that the reference be answered in favour of the Workman Union holding the demand of classification of the workman Union legal and justified and by holding that the workman are entitled to all the benefits admissible to regular employees of SECL engaged in the same job in other areas.

3. The management has mainly denied the allegations of workman Union with a case that the details of the workman mentioned in the reference are not given, hence it is not in a position to identify them. According to the management, initially the dispute was raised before Assistant Labour Commissioner regarding 54 contract workers which has now enhanced to 61 in the records. It is the case of the management that the saw mills are not a work of permanent and perennial nature. Now the saw mills then established to reuse old timber for making patta and plans used with timber props now have been changed to be used for roof bolts and steel props due to shortage of timber, hence the saw mills are now closed. Thus the work on the Saw Mills is of intermittent nature and not work of permanent and perennial nature. According to the management, preparation of plans and rafts is not a mining activity as it does not fall in any of the category of the works under Section 2 of the Mines Act. The management has further denied that none of these workman has worked continuously for 240 days or more in any year also denying the case of the workman that they worked under the control of the Management. The management also denied the allegations of the workman union that the same job was taken by the regular employees in other areas of SECL. The management further denied the claim of the workman union that the case of the workers under reference is at par with the case of workers in Suhagpur area under settlement between the management and the Workman Union. According to the Management, these workman were contract workers engaged by contractors who was allotted tenders for these works. They have never been

employees of the management. There is no employer and employee relationship between these workman and Management of SECL at any point of time . Accordingly the management has prayed that the reference be answered against the workman Union.

4. The workman Union has filed rejoinder wherein it has mainly reiterated its case. According to the workman Union, the Management is legally and statutorily bound to have records of the workers as provided in the Mines Act and Contract Labour(Regulation & Abolition )Act,1970 and is required to file these documents to bring out the whole truth. According to the workman Union, under Section 2(h)(VII) of the Mines Act, the workers engaged in saw mills are said to be the person employed in Mines and as per Section 2(J)(vi) of the Mines Act, the saw mills is Mines, hence these workers are workers provided in mines for the purpose of mining which is prohibited. The workman Union has further reiterated that the said work is of permanent and perennial nature and is not of intermittent nature. It is an essential part of the coal extraction. Earlier it was done by timber now it is done at same place by iron and steel planks.

5. The workman has filed documents , photocopy of representation of the workman union before the Assistant labour commissioner, copy of order of Hon'ble High Court in Writ Petition, minutes of the Company meeting between the Union and the Management on 16-11-1984, all admitted by management and marked as Exhibit W1 to W3 respectively. The Workman Union has further filed identity details of the workman under reference.

6. The workman Union has filed affidavit of several workman as there examination in Chief. Out of which only workman Dhyan Singh Rampal, Bharatlal, Munnilal and Javed Akhtar Usmani Clerk who happens to be the Union Representative also. The workman Union has further filed copy of settlement form-H and has proved it.

7. The management has filed affidavit of its witness Amarjeet Singh, Manager Personnel Hasdeo Area and Suryakant Singh Deputy Manager Survey out of which only Shri Suryakant Sinha appeared for cross-examination and he was cross-examined. The management has not proved any documents.

8. I have heard arguments of Mr. R.C.Shrivastav, learned counsel for the Workman Union and Mr. A.K.Shashi. The workman Union has filed written argument and I have gone through it. I have also gone through the record.

9. Perusal of record in the light of rival arguments make out the following issues for determination in the case in hand:-

**(1) whether the work taken by the Management through contractor by engaging the workmen under reference is of permanent and perennial nature in violation of National Coal Wage Agreement?**

**(2) Whether the Management has adopted unfair labour practice by engaging contract workers in mining activities of permanent and perennial nature?**

**(3) If the answer of Issue No.1 and No.2 is yes then what will be its legal effects and whether the workmen under reference are entitled to be departmentalized and entitled to get all benefits with respect to wages and other emoluments?**

**10. ISSUE NO.1:-**

Before entering into any discussion on merits, certain provisions need to be reproduced which are being reproduced as under:-

1.) 11.5.1 of National Coal Wage Agreement

2.) Section 1(5) (a) of Contract Labour (Regulation & Abolition) Act, 1970.

3.) Section 2(h)(VII) of the Mines Act.

4.) Section 2(j)(vi) of the Mines Act

**11.5.1 of National Coal Wage Agreement**

**11.5.1 Industry shall not employ labour though contractor or engage Contractors labour on jobs of permanent and perennial nature.**

**Section 1(v)(a) of Contract Labour (Regulation & Abolition) Act, 1970.**

**Section 1(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.**

**(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.**

**Explanation.-For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-**

**(i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or**

**(ii) if it is of a seasonal character and is performed for more than sixty days in a year.**

**Section 2(h)(VII) of the Mines Act**

**5[(h) a person is paid to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not—**

**(Vii) in any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations;]**

**Section 2(j)(vi) of the Mines Act:-**

**2(j) Mine means any excavation where an operation for the purpose of searching or for obtaining minerals have been or is being carried on and includes-**

**1.....**

**2.....**

**3.....**

**4.....**

**5.....**

**6. All aidts, livels, planes, machinery works, railways, tram ways, and sidings in or adjacent to and belonging to a mine;**

**7.....**

11. From perusal of these provisions, it is established now that if work continues for more than six months or is likely to continue for more than six months, it shall be deemed to be a work of permanent and perennial nature and that engagement of contract labour is prohibited for the works of permanent and perennial nature. Now it remains to be seen whether from the evidence on record, this allegation of workman union that the work was of permanent and perennial nature is proved or not?

12. According to the pleadings, the case of the workman union is that these workman were engaged from 1982 in Saw mills and continued till 2001. This fact is corroborated by the workman witness in their statement. The workman Rampal has stated that he worked from 1984 to 1988, workman Bharatlal stated that he has worked from 1983 to 1991, workman Munnilal has stated that he worked from 1985 to 2000, workman Union representative who also is an employee of the management has stated that he worked from 1983 to 1991 and in some colliery they are still doing the same job. ON the other side the management witness Shri Suryakant Sinha admits that supervision of Saw Mills is not his job. It has never been his job. He further states that the contract workers are engaged in Saw Mills that is why he states that these workmen were engaged by contractors who were given the work by the Management. He names different contractors to whom the work was allotted by the management in different period but he does not disclosed the period in which the contractors were engaged in saw mills or the work was taken from contractors in the saw mills. The statutory records to be maintained by Management as per the Mines Act and Contract Labour(Regulation & Abolition )Act,1970 are expected to be with the management. The Management could produce these documents namely attendance registers, payment vouchers, contractors agreements to rebut the on oath statement of the workman Union which it has not done, hence holding the evidence of workman witness appears more reliable on this point, hence the fact that the job in the saw mills continued from 1982 to 2000 is held proved. Accordingly it is held proved that the work which the workman did in the saw mills was of permanent and perennial nature which is prescribed in National Coal Wage Agreement which is in violation of NCWA. **Issue No.1 is answered accordingly.**

**13. ISSUE NO. 2:-**

The unfair Labour practices have been enumerated in Schedule-V of the Industrial Disputes Act, 1947. Section 25T of the Industrial Disputes Act,1947 prohibits unfair Labour practice which reads as under:-

**25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.**

THE FIFTH SCHEDULE : Unfair Labour Practices

**[Section 2(ra)]**

**I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS**

**(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-**

**(a) threatening workmen with discharge or dismissal, if they join a trade union;**

**(b) threatening a lock-out or closure, if a trade union is organized;**

**(c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.**

**(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,**

**(a) an employer taking an active interest in organizing a trade union of his workmen; and**

**(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.**

**(3) To establish employer sponsored trade unions of workmen.**

**(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,**

**(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;**

**(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);**

**(c) changing seniority rating or workmen because of trade union activities;**

**(d) refusing to promote workmen of higher posts on account of their trade union activities;**

**(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;**

**(f) discharging office-bearers or active members of the trade union on account of their trade union activities.**

**(5) To discharge or dismiss workmen-**

**(a) by way of victimization;**

**(b) not in good faith, but in the colorable exercise of the employer's rights;**

**(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;**

**(d) for patently false reasons;**

**(e) on untrue or trumped up allegations of absence without leave;**

**(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;**

**(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.**

**(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.**

**(7) To transfer a workman mala fide from one place to another, under the guise of following management policy.**

**(8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.**

**(9) To show favoritism or partiality to one set of workers regardless of merit.**

**(10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.**

**(11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.**

**(12) To recruit workman during a strike which is not an illegal strike.**

**(13) Failure to implement award, settlement or agreement.**

**(14) To indulge in acts of force or violence.**

**(15) To refuse to bargain collectively, in good faith with the recognized trade unions.**

**(16) Proposing or continuing a lock-out deemed to be illegal under this Act.**

**Section 23 of Indian Contract Act, 1872 enumerates the list of void agreements which is as follows:-**

***23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.***

12. Since it has been held that the work being of permanent and perennial nature could not be got done through contractors, hence any agreement between Management and any contractor for the aforesaid work is not a valid and legal contract between the parties because the very object of this agreement is to defeat law and do work which is forbidden by law. Section 2(h) of the Indian Contract Act, 1872 defines" **Contract as an agreement enforceable under law"** since the agreement or contract between the contractor and the management for the work of Saw Mills is a void agreement since the beginning, it cannot be said that there was any contract as defined in Section 2(h) of Indian Contract Act, between the parties.

13. Rule 3(1) to 3(7) of the Certified Standing Orders of S.E.C.L. deals about the classification of the workman as follows:-

**3- CLASSIFICATION OF WORKMEN :-**

**3.1 For the purpose of these Standing Orders**

**classified as follows' :**

**(a) Apprentice**

**(b) Badli or substitute**

**(c) ,'Casual**

**(d) . Permanent**

**(e) 'Probationer**

**(f) Temporary**

**3.2 "Apprentice" is a learner, who is paid an allowance during the period of is training which shall interalia be specified in the terms of contract provided thel the Apprentices engaged under the Apprentices Act shall be covered' by the provisions of that Act only,**

**3.3 "Apprentice" is a learner, who is paid an allowance during the period of his training which shall interalia be specified in the terms of contract provided th4l the Apprentices engaged under the Apprentices Act shall be covered' by the provisions of that Act only, 'Badli or substitute' is one who is appointed in the post of permanent workmen or probationer who is temporarily absent.. but he would cease to be a'badli' on completion of a continuous period of service of one year (190 attendances in the case of below ground workman and 240 attendances in the case of any other workmen) in the same post or other post or posts in the same category, or earlier if the post is vacated by the permanent workmen or probationer, A 'bedli' working in place of a probationer would be deemed to be permanent after completion of the probationary period,**

**3.4 A 'casual workman' means a workman who has been engaged for work which is intermittent or sporadic or of casual nature not extending beyond a maximum :.period 3 (three) months at a time provided that for employment of casual wagon ,loaders the time limit of 3 (three) months ':**

**shall not apply,**

**3.5 A 'permanent '.'workman is ono who is employed on· a job**

**of permanent Nature for a period of atleast six months**

**or, w.h.o' has satisfactorily put in 6:.(six months continuous service in a permanent post as a probationer.**

**3.6 A 'probationer' means a person who is ,provisionally employed to fill vacancy in II permanent post for probationary period not exceeding 6 (six) months and who has not completed his period provided that to period of probation may be extended b y the management beyond "the original**

**period by not more than 3 (three) months for reasons tobe recorded in writing, If a permanent workman is employe as II probationer in a new post, he may be any time during the probationary period. not exceeding 6 (six)**

**months, be reverted to his old permanent post unless the probationary period is extended by another 3 (three) months for reasons to be recorded in writing. If no positiveorder is issued by the Management on the expiry of theprobationary period or extended probationary period, asthe case may be, the employee concerned shall be deemedto have been confirmed.**

**3.7. Temporary workman means workmen who is appointed for work which is essentially of a temporary nature or who is employed in connection with a temporary increase in permanent work for a period not exceeding six months provided that in case the temporary workman is placed on probation the period of his temporary service shall count towards the probationary period.**

14. The Certified Standing orders as mentioned above, provide that on completion of six months in continuous employment, the workman will get permanent status and will be entitled to benefits admissible to permanent employees. It is also established and has been held proved that the workman worked for more than six month with the management. It is clear from these facts that the sole purpose of Management behind taking the work of this nature through contractual workers was to defeat them of their lawful admissible claims as admissible in the Certified Standing Orders and other benefits admissible to them. Hence in the light of this discussion, it is established that the Management in this case had adopted unfair labour practice. **Issue No.2 is answered accordingly.**

**15. ISSUE NO.3:-**

In the light of the finding recorded on Issue No.1 and Issue No.2 the question arises is of the legal effect of such action. Learned counsel for the workman Union as referred to following decisions of Hon'ble the Apex Court in this respect **Bharat Bank Vs. Employees of Bharat Bank Ltd**. (1950) L.L.J.921 held :-

**"that in settling the dispute between the employers and the workman the function of Tribunal is not confined to administration of justice I accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It can create new rights and oblations between them which it consider essential for keeping industrial peace.**

**16. Siemens Ltd. Vs. Employees Union (2011) 9 SCC 775 held that:-**

**"Where commission of unfair labour practice is ex-facie is clear from the facts, even without pleadings, courts have power to adjudicate the same to resolve the dispute. It is necessary to achieve industrial peace and harmony."**

17. **Learned Counsel for the management has relied on following case laws:-**

A. **State of M.P. & Others Vs. Arjunlal Rajak(2006)2 SCC 711.**

**B Dhampur sugar Mills Vs. Bhola Singh, AIR 2005 SC(1790).**

15. The adoption of unfair labour practice by management in the case in hand has been held proved. Courts and Tribunals are statutorily bound and are authorized to red flag such practice and pass appropriate orders to undo the effects of such unfair labour practice. The sole process of adoption of such unfair labour practice by Management, as it has been held proved in the case in hand, is to deny the workman of their rights and to deprive them from their wages and other benefits which would have been entitled to had the management not adopted this unfair labour practice.

16. Contract Labour Regulation & Abolition Rules 1971 rule 25 (v) (a)

**25. Forms and terms and conditions of licence.-**

**(v)(a) in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other condition of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work:**

17. An another proved fact is that the management has regularized contract workers working in Saw Mills in Bijuri Area which is certified by copy of settlement between the management and the workman union which is Exhibit W1 in the case in hand. When similarly placed workman has been granted one benefit in one area, there is no occasion to refuse the same benefit to the similarly placed workmen in another area under the same Management and control of the same company SECL. Hence, in the light of above discussion, the workmen in the case in hand as mentioned above, are held entitled to be classified as permanent workmen in

relevant Certified Standing Orders applicable to SECL for the period they have worked. They are also held entitled to all the benefits regarding wages and other benefits admissible to the permanent workmen doing same jobs for the period they have worked.

18. It is in evidence that the saw mills have now been closed hence these workman cannot be reinstated but since they were not paid any recruitment compensation nor were they given any notice prior to recruitment, their retrenchment is still illegal.

19. Keeping all the facts of the case in view and also keeping in view the fact that much time has passed during litigation, a lump sum compensation as full and final settlement in lieu of all their claims quantified at Rs 2,00,000/- (Two Lacs) to each workman will meet the ends of justice Each of such workmen is held entitled to receive this amount from management.

20. The workmen are also held entitled to receive the amount from management within 30 days from the date of publication of Award in official gazette , failing which it shall attract interest at the rate of 6% p.a. from the date of notification till payment.

21. On the basis of the above discussion, following award is passed:-

**A. The action of the management of SECL, Hasdeo Area in not departmentalizing the Tiber Saw Mill Workers engaged through a contractor is held to be not justified in law.**

**B. The workmen are held entitled to compensation of Rs.2,00,000/ (Rs. Two lakhs) only each to be paid to by management of SECL within 30 days from the date of publication of Award in official gazette, failing which it shall attract interest at the rate of 6% p.a. from the date of notification till payment.**

C. **Workmen union is held entitled to litigation cost Rs 50,000/- from management**

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 22-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1057.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय** जबलपुर के पंचाट **(संदर्भ संख्या 91/2007)** को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/14/2007-आई. आर. (सी-एम II)]

**राजेन्द्र सिंह, अवर सचिव**

New Delhi, the 27th October, 2022

**S.O. 1057.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 91/2007)** of the **Central Government Industrial Tribunal-cum-Labour Court JABALPUR** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on 1**2/10/2022.**

[No. L-22012/14/2007 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR**

NO. CGIT/LC/R/91/2007

Present: P.K. Srivastava, H.J.S..( Retd)

The Area Secretary

Sanyukta Koyala Mazdoor Sangh (AITUC)

B-13/1, Paali Pariyojana Colony,

Umaria (M.P.) ...Workman

**Versus**

The Chief General Manager,

Johilla Area of

South Eastern Coal Fields Limited

PO-Nowrozabad, Umaria(M.P.) ...Management

**AWARD**

**(Passed on 29-9-22.)**

As per letter dated 10/9/2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/14/2007-IR(CM-II). The dispute under reference relates to:

"**Whether the demand of the Union for regularizing Shri Dadan Singh Rathore, Belt Operator in Cat.IV on Surface work as his services has been utilized by the Management? If so, to what relief is the workman entitled? .**"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was initially appointed as a general mazdoor Category-1 on 19-10-1989 at Pali Colliery of SECL. He became permanent General Mazdoor Category-1 on 1-1-1991. He was promoted as Conveyor Belt Cleaning Mazdoor in Category-2 in 1994. He was further promoted as Belt Operator Category-III in 1997. He was deployed for work as Clerk Grade-III by Management but was not paid the wages. He worked as Pit Store Issuer Clerk -III. The work of Way Bridge Clerk was also taken from him. During this period but he was not given any officiating allowance or difference of wages for this period which is against law on the part of the management. According to the workman, this action of the Management in not providing the benefits attached to the post o Clerk Grade-III is arbitrary, unjust and unreasonable and discriminatory. Accordingly it has been prayed that he be held entitled to be regularized as Clerk Grade-III from the date he was initially deployed to work as Clerk Grade-III with all consequential benefits and also be held entitled to get the difference in wages.

3. The case of the Management is mainly that the service condition of employees in Coal Industry are governed by various settlements know as National Coal Wage Agreements. There is a Cadre Scheme and Rules for promotion in every category. Cadre Scheme of Conveyor is different from that of the Clerk. The workman was initially appointed on 19-10-1989 at Pali colliery of SECL after his regularization as General Category mazdoor Grade-1 w.e.f. 1-1-1991, he was given promotion to the post of Belt Cleaning Mazdoor in Category-2 w.e.f. 1-10-1994 and thereafter to the post of Belt Operator Category-III w.e.f. 1-4-1997. He was further promoted to Conveyor Belt Operator Category-4, hence the dispute under reference ceases to exist now. According to the management, the workman was never asked to work as Clerk Grade-III at any time and Cadre Scheme of Ministerial Cadre is different from the Cadre Scheme Conveyor Personnel. Accordingly, the management has prayed that the reference be answered against the workman.

4. The workman has filed rejoinder reiterating his claim.

5. In evidence, the workman has filed photocopy of letter of Union Representative before the Assistant Labour Commissioner Central raising the dispute. Photocopies of Reference order, Authorizations, Representation to Mines Manager, Letter to Assistant Labour Commissioner and Representation to Deputy Area Manager, Pali Colliery, all admitted by Management and marked as Exhibit W1 to W-6 respectively.

6. The management has filed photocopy of office order dated 31-3-2006 and photocopy of Cadre Scheme for Conveyor Personnel both admitted by workman side and marked as Exhibit M1 and M2 respectively. The workman has filed his affidavit as his Examination-in-chief. He has been cross-examined by workman.

7. I have heard arguments of learned counsel Mr. Vijay Tripathi for workman and Shri A.K.Shashi, learned counsel for the Management. I have gone through the record as well.

**8. The reference itself is the issue for determination, in the case in hand.**

9. As it is clear that the reference is regarding the refusal of Management to employ the workman as Belt Operator in Cetegory-4 on surface wall is justified or not? In his statement of claim, he claims for difference of wages for the post of clerk for which he worked under the directions of the management and regularization as Clerk Grade-III, this is beyond the scope of reference. It is established from the evidence of Management and even admitted by the workman in his statement on oath that he has been granted promotion on the post of Conveyor Operator Category-4 which is evident from Exhibit M-1. The workman side could not refer to any Rule or Regulation that the workman has matured the right to be posted on the surface as Conveyor Belt Operator Category-4. He is posted on this post under Mines. To post the workman in different sections is the prerogative of the Management, hence the demand of the workman union for regularization of the workman on surface is held not justified in law. As it appears from the record, the workman has already been regularized by Management as Belt Conveyor Operator Category-4 since the year 2006.

10. In the light of the above discussion, the reference needs to be answered against the workman, holding the demand of the workman Union unjustified in law and the workman is entitled to no relief.

11. On the basis of the above discussion, following award is passed:-

**A. The demand of the Union for regularizing Shri Dadan Singh Rathore, Belt Operator in Cat.IV on Surface work is held to be unjustified.**

**B. he workman is held entitled to no relief.**

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 29-9-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1058.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय** जबलपुर के पंचाट **(संदर्भ संख्या 55/1996)** को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/339/95-आई. आर. (सी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1058.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 55**/1996*)* of the **Central Government Industrial Tribunal-cum-Labour Court JABALPUR** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on 1**2/10/2022.**

[No. L-22012/339/95 – IR (C-II)]

RAJENDER SINGH, Under Secy.

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

NO. CGIT/LC/R/55/1996

Present: P.K. Srivastava, H.J.S..( Retd)

The General Secretary

M.P. Koyla Mazdoor Sabha (H.M.S)

Po: South J, K, D.Colliery

District surguja (M.P.)-497447 ... Workman

**Versus**

The Superintendent of Mines

North Chirmiri Collieiry

Po:North Chirmiri Colliery

District Surguja (M.P.) 497446 ... Management

**AWARD**

**(Passed on 12-10-2022)**

As per letter dated 22/2/1996 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/339/95-IR(C-II)The dispute under reference relates to:

"**Whether the action of the management of North Chirmiri colliery of Chirmiri Area of SECL in employing 11 workers mentioned in Schedule on the tub repairing work between the period 1964 to 1992 as contract labour was bonafide or it was camouflage? To what relief these 11 workers are entitled .**"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of defence/claim.

2. According to the workman Union Suresh Kumar and ten others mentioned in the reference were working as Tub Repairing workers in the chirmiri colliery of chirmiri area of the management of SECL Ltd. From 1978 to 1992. The coal in the mines is carried from underground to the surface and to the coal handling plant/point of dispatch through tubs and is incidentally the coal industry. Tub repairing is integral work to keep the tubs in proper working order. The Management engaged Suresh Kumar and nine workers as tub repairing mazdoor within the mines premises of the chirmiri colliery. They were required to go inside the mines also for the repairing of the tubs but they were deprived the wages of category-II as prescribed in various National coal Wage Agreements in force during the period. The Management showed Suresh Kumar as a ghost contractor though he was also a co-worker with the nine other workers in tub repairing works as tub repairing mazdoor. The payment of these mazdoor as well as Suresh Kumar was made to them through Suresh Kumar depicting him to be the contractor. According to the workman Union these workmen worked from 1978 to 1972 which goes to show that the work is of perennial and permanent nature and is of regular nature. This action of Management in engaging these workmen as contractor labour on such job of permanent and perennial nature is in violation of NCWA-3-4 Clause 11.5.1. Also it has been alleged that the management of Chirrmiri Colliery was not legally competent to engage contractor workers as it was not registered under Section 7 of the Contract Labour(Regulation and Abolition )Act,1970 read with Rule 18 of Contract Labour rules 1971 also that the loading and transpiration of coal from mines to surface was done by tubs hence tub repairing being integral part of this activity is also a work of prohibited category according to the notification of appropriate government of 1-2-1975 and 1988 in this respect which prohibits engagement of contract labour in coal loading and uploading. These workmen have worked for the profit of the management. The same work was performed by the regular workforce of the Management in different area. According to the workman Union, the management provides vocational training as mentioned in Vocational Training Rules 1966 and is under obligation to maintain registers as mentioned in Section 48 of the mines Act, 1952, and Rules 48, 77, 78 of Mines Rules, these registers must be in the custody of the Management. Further it has been alleged that these workmen worked under the directions supervision and control of the official of the chirmiri colliery. The instruments were provided by Management. They worked on the site of the management. Their attendance was marked and payment was also made by the Management of SECL. According to the workman Union a similar dispute arose with regard to tub repairing mazdoor in Hasdeo area under the management and control of SECL with regards to 200 tub repairing mazdoor which were referred to arbitration. The Arbitrator delivered its award holding these tub repairing mazdoor

entitled to departmentalization of all consequential benefits , hence the claimant workman in the case in hand are also entitled to parity. The workman Union has further alleged that all these workman have been in continuous engagement of the Management for 240/190 days in every year. Their services are terminated without any compensation or notices which is in violation of Section 25G and 25F of the Industrial Disputes Act. Accordingly, the case of the workman Union is mainly that the workman were engaged in work of prohibited nature and category which was of permanent and perennial nature under a sham contractor who was a co-workman just as a camouflage to deny these workman their legally admissible rights. Accordingly it has been prayed that the workmen be held as regular employees of the management of SECL and also be held entitled to re-instatement with all consequential benefits right from their date of their engagement.

3. The case of the management of SECL as taken in their written statement of defence is mainly that firstly the General Secretary of the Union has no locus stadia to raise the dispute as the workers are contract workers who cannot be Member of the Union as per their consideration. Secondly the dispute has been raised after lapse of considerable time, hence is barred by delays and latches. Thirdly, the order of reference is vague and it cannot be adjudicated upon.

4. Apart from these preliminary objection, the Management has pleaded that it is registered Principal Employer under the Contract Labour(Regulation and Abolition )Act,1970, hence is authorized to engage contractor labour for certain categories of work which are not prohibited in the Act. According to the management, the applicant workmen were never engaged by them or by the contractor at any point of time for the work of tub-repairing. Moreover the work of tub repairing is not that of permanent and perennial nature. Since these applicant workmen were never engaged by management their existed no relation of employer and workman between the management and the applicant workman. The name of the applicant workman has not been disclosed in the reference, hence it is difficult to establish that these are the workmen who really worked as tub repairing workers. Moreover the practice of transportation and loading and unloading of coal in tubs has been done away now and the work is not available at present. Accordingly the management has prayed that the reference be answered against the workman Union. The workman Union has filed affidavits of workmen Toofani, Ramchandar, Siraj Ali and Ramsewak, out of which Siraj Ali has been cross-examined by management.

5. The management has filed affidavit of its witness Basant Ram who have been cross-examined by workman union.

6. The workman union has filed different contracts awarded to the contractor Suresh Kumar and payment bill for rub repairs as well different letters regarding payment of bills of tub repairing as well as work of tub repairing from the period 1984 to 1992 they are exhibits W2(1 to 38).

7. Management has filed photocopy documents mainly work orders and payment vouchers already filed and proved by workman Union. Management has also filed a photocopy of registration certificate dated 13-1-1986 under orders of this Tribunal.

8. I have heard arguments of learned counsel Shri R.C.Shrivastava appearing on behalf of workman Union and Mr. A.K.Shashi for management. The workman Union has filed a memorandum of arguments which is on record. I have gone through the memorandum as well as the record.

9. Perusal of the record in the light of rival arguments makes out the following issues for determination.

**"1:-Whether the workmen were engaged in work of prohibited category.?**

**2:-Whether the alleged contracts where sham and bogus, rather a camouflage to deprive the workmen of their benefits.?**

**3:-Whether the disengagement of workmen is justified in law and fact.?**

**4:-Whether the workmen are entitled to any benefits."**

**11. Issue No 1-**

According to the respective claims of the parties in this case, it is alleged from the side of the Workmen that the said contract isof prohibited category on two grounds **Firstly,** because it was work of perennial/regular nature and **Secondly,** it was prohibited by notification of Government of India dated 21-1-88. **Section 1 Sub-Section (5) of the CLR & Act** is relevant here which is being reproduced as follows:-

**"(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.**

**Explanation.-- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature—**

**(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or**

**(ii) (ii) if it is of a seasonal character and is performed for more than six months in a year."**

12. Learned Counsel for the Workmen/Union has further referred to Clause **11.5.1 of the agreement of NCWA 4/5** which reads as follows:-

**"Industries shall not apply labors through contractor or engage contractor's labor on jobs of permanent and perennial nature."**

13. Learned Counsel further refers to Notification of Government of India dated 21-6-1988 on record which prohibits contract labor in following jobs :-

**The Schedule**

**1.Raising or raising-cum-selling of coal;**

**2.Coal loading and unloading:**

**3.Over burden removal and earth cutting:**

**4.Soft coke manufacturing**

**5.Driving of stone drifts and miscellaneous stone cutting underground:**

**Provided that his notification shall not apply to the following categories:-**

**(a)Quarries in the North-East Coal Field which can only be worked for a few months every year due to heavy rainfall in the area:**

**(b)Quarries located by the side of the riven in Pency valley and similar other patch deposits which can only be worked when the level of river has gone down and during non-rainy seasons;**

**(c)Loading coal when there is mechanical failure, failure of power or irregular supply of wagon by the railway; and**

**(d) Cutting stone drifts/faults which cannot be detected in advance and are of short duration, say up to six months.**

14. It is in the argument of learned Counsel of Workmen that since there was in prohibition of NCWA and CLRA Act, as mentioned above, hence the work for which the so called contractor is alleged to have been engaged of prohibited nature which could not be done through contractor. On the other hand, learned counsel for Management has submitted that **firstly**, the work is not of perennial nature as mentioned in Section -1 Sub-Section 5 of the CLRA Act and **secondly,** the evidence on record as well documents regarding the issuing of tender and work agreement as well as work order show that the said got executed through the contractor was of prohibitory category as mentioned in the notification dated 21-6-1988. The workman Siraj Ali has stated that he and his 10 colleagues namely Suresh Kumar, Bhargawan Pillai, Santosh Kumar, Ramsewak, Ashrafi, Chandrama, Ramashankar Rambharose, Swargal, Swaroopa Arjun Prasad Bandhan Sai, Durbal Rajesh Kumar and K.R.Nair used to do the job of tub repairing in chirmiri colliery within the period 1984 to 1992 as directed by the officials of Management under their directions, control and supervision. Their attendance was marked in the attendance register by the officials of management. Instruments of repair were provided by the management from the store. They used to work inside the mines also for tub repairing all of them have worked continuously for more than 240 days in every year. The workman doing the same nature of job were regularized by the same Management under Bhave Award dated 30-8-1990. In his cross-examination, this witness states that he was member of Union. He used to give member fee of the Union which used to issue receipt. He had given authorization to Union in writing or not he does not remember. He further states that he was employed by one Mr. Chaddha., Manager no written appointment order was issued. He used to work for repairing the tub inside the mines also. The payment of wages was done by the Cashier . The so called contractor also worked as a mazdoor with him. He pleads ignorance regarding any work contract given to the contractor by Management. He states that they used to do repairing on information of a damaged tub given to them by Suresh Kumar or Officials of Management. He does not remember the name of the Officers who appointed him. He specifically denies that he was engaged by Suresh Kumar the alleged contractor. He admits that the accounts and wages of the workers were maintained by NazirullahKhan, the alleged contractor. He denied that Suresh Kumar was a contractor and states that he was a co-worker with them. This Suresh Kumar used to receive the wages collectively from the office and distributed it among the workman.

10 The workman Bibunsai also states the same facts. In cross-examination he denies that Nazirullah used to maintain the record of the attendance and wages of the workers. He also pleads ignorance regarding the relation between Suresh Kumar and the Management.

11. The Management witness has generally corroborated the case of the management that the job of tub repairing was not of permanent nature nor was it of prohibited category. It was taken though the contractor Suresh Kumar who was awarded the contract. He used to get it done through his workers. He was paid by the Management for which it had agreed the rates on piece level.

12. Notification of Central Government,1988 issued under Section 10 of the Contract Labour(Regulation and Abolition )Act,1970 as referred to above prohibits engagement of contract labour in coal loading and up loading, it is common knowledge that before introduction of machines for the purpose of loading the coal inside the mines and taking it to on surface, tubs were used. Know this job is done by machines and use of tubs for this has been done away. Maintenance and repairs of the tubs used for loading and uploading of coal inside the mines and bringing it on surface is no doubt an integral part of the activity of loading and uploading of coal. Hence, being an integral part of loading and up loading of coal, engagement of contract labour for repairing and maintenance of tubs used for loading and uploading will also be deemed as prohibited under the notification of 1988 referred to above and is held accordingly.

13. As regards the second leg of arguments from the side of the workman Union that the work could not be taken by contract labour because it was work of permanent and perennial nature, it is undisputed that the work continued from 1984 to 1992. Loading of coal inside the mines and bringing it on surface for being transported to various locations from there is an integral part of mining activity regarding coal production and it no doubt exists till mining is done from the mines. Since tubs were used at that time for this purpose, maintenance and repairs of tubs will also be a continuous ie; permanent and perennial activity relating to mining exercise. Accordingly, loading and uploading of coal extracted inside the mines is held an activity of permanent and perennial nature , Clause 11.5.1 of NCWA referred to above specially prohibits engagement of contractors or contract labour in job of permanent and perennial nature. Reference of Section 1(5) of the CLRA Act,1970 also requires to be made in this respect which is as follows:-

**Section 1(5) of the'C.L.(R&A) Act 1970'**is relevant here which is being reproduced as follows:-

**"(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.**

**Explanation.-- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature—**

**(i)if it was performed for more than one hundred and twenty days in the preceding twelve months, or**

**(ii) if it is of a seasonal character and is performed for more than six months in a year."**

14. Learned Counsel for Union as further referred to Bhave Award which is an arbitration award between the management of SECL i.e. Management in the present case and tub repair workers of Hasdeo area colliery regarding the same nature of dispute. Thus it is an Award with respect to same dispute between similarly parties or similarly place parties and hence is relevant to this case and in this Award of 1990, copy of which is on record. This activity has been held as activity of permanent and perennial nature. Hence in the light of these facts and evidence, the activity of tub repairing is liable to be held as a activity of permanent and perennial nature and is held accordingly.

**15. Hence, the claim of the workman Union that the work done was prohibited vide notification of 21-7-1988 issued by Central Government under Section 10(1) of the CLRA Act,1970 and was thus prohibited to be taken by coantract labour as well the work was of permanent and perennial nature for which employment of contract labour was prohibited under Clause of 11.5.1. of NCWA-4/5 is held proved andIssue No.1 is answered accordingly.**

**16. ISSUE NO.2:-**

Before entering into examination of evidence on this issue produced from both the sides, it is proper to refer the case laws referred to by both the side learned counsel in this respect is as under-

20. The learned Counsel for workmen/Union has referred to case law **Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and others, (1978)4 Supreme Court Cases 257**. The relevant portion is reproduced below: -

**"Labor and Industrial Law – Industrial Disputes Act 1947 – Section 2(s) – Employer and employee relationship – Workmen employed by independent contractor to work in employer's factory – Whether "workmen" – Tests for determining The petitioner is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired**

**by contractors who had executed agreements with the petitioner to get such work done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The High Court rejected the contention. Dismissing the appeal, the Supreme Court.Held: The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner. (Para-2).The true test is where a worker or group of workers labor to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contrctu is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labor legislation casts welfare obligations on the real employer based on Arts. 38, 32, 42, 43 and 43A. If livelihood of the workmen substantially depends on labor rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and aggrieved workmen, the employer is in substance and in real life-term, by another.**

Learned Counsel for workmen has further referred to following case laws-

**(i) Gujarat Electricity Board, Thermal Power Station, Gujrat Vs. Hind MazdoorSabha, 1995-II-LLJ-790**

**Industrial Disputes Act, 1947- Sec. 2(k), 2(s), 10(2) – Contract Labor (Regulation & Abolition) Act 1970- Sec.10 – Abolition of contract labor – industrial dispute – jurisdiction of Labor Court under Industrial Dispute Act – Jurisdiction of Appropriate Government has exclusive jurisdiction to decide in regard to abolition of contract labor – section 10 of the Contract Labor Act would come into play only in cases of genuine contract and not when contract is sham or camouflage – contract Labor abolition act does not provide for status of the contract labor after abolition – Industrial Tribunal whether have jurisdiction to direct principal employer to absorb erstwhile workmen of the contractor and also determine the terms and conditions – Industrial adjudicator will determine the status of a workmen or abolition of contract labor, if industrial dispute was pending before him on date of abolition of contract labor system by appropriate government – workmen of erstwhile contractor can raise dispute on the basis that they are workmen of principal employer and dispute in such cases would be not for abolition of contract labor, but on the footing that workmen were always employees of principal employer - "**

(ii) **Secretary, Haryana Electricity Board Vs. Suresh and others, AIR-1999-SC-1160.**

**"(E) Contract Labor (Regulation and Abolition) Act (37 of 1970), S.10 – Contract Labor – Absorption in service- Electricity Board – Work of keeping plants and station clean and hygienic awarded to contractor- work not of seasonal nature – contract itself stipulating number of employees to be engaged by Contractor – Overall control of working of contract labor including administrative control remaining with the Board – Board neither registered as principal employer nor contractor was licensed contractor – Contract system was thus a mere camouflage which could be easily pierced and employer employee relationship between Board and employee easily visualized – Employees who have worked for more than 240 days cannot therefore be denied absorption."**

Learned counsel has referred following para(Paras 15, 17, 19),being reproduced as follows-

**'15- It would in this context, however, be convenient to note the observations of the High Court as below:-**

**"The learned counsel for the petitioner has tried to argue that the findings of fact arrived at by the Labor Court was not based upon proper appreciation of evidence. This plea cannot be accepted in as much as the Labor Court has referred to the whole of the evidence lead in the case before coming to such a conclusion. Otherwise, also in view of the law laid down by the Supreme**

**Court in R.K. Panda's case (supra) the findings of fact arrived at by the Labor Court cannot be set aside in writ jurisdiction particularly when it is neither perverse nor contrary to the record but based only on appreciation of evidence. Keeping in view the nature of the work being carried on by the petitioner, the nature of duties which were performed by the respondents-workmen, the continuity of the work for which the labor was employed and the fact that the wages were paid by the petitioner-employer who supervised and controlled not only the attendance but also discipline of the workmen in the discharge of their duties and keeping in view the conditions of contract of the employer with Kashmira Singh, Contractor, there is no other conclusion which can be arrived at except the one that there existing a relationship of employer and workmen between the contesting parties and the Labor Court had rightly passed the award which is impugned in this petition."**

**17-As noticed above Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation, specially on the wake of the new millennium. The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises – is it permissible in the new millennium to decry the cry of the labor force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution – the answer cannot possibly be in the affirmative – the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people. The expression 'regulation' cannot possibly be read as contra public interest but in the interest of public.**

**19-It has to be kept in view that this is not a case in which it is found that there was any genuine contract labor system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labor Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labor Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labor for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labor Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labor on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labor Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualized.'**

(iii) **Bharat Bank Limited Vs. Employees of Bharat Bank Limited, AIR 1950 SC 188.**

**The Hon'ble Supreme Court has held that the Tribunal has got wide power in given circumstances, it can create contract between parties in the interest of justice. No other Courts vested with such power.**

On the other hand learned Counsel for the Management referred to a judgment of Supreme Court in case The Director SAIL India vs. IspatKhadandanMazdoorUnion civil appeal no 8081-8082 of 2011 reported in AIR 2019 SC 3601. Para 33,35,39,41,44,46,48,49 have been specifically referred to by learned counsel as follows:-

"Before we may advert to examine the question in the instantappeals any further, it will be apposite to take note of the legaleffect of the prohibition notification issued by the appropriateGovernment in exercise of power under Section 10(1) of CL(R&A.) Act and itsexposition by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others (supra) overruling thejudgment in Air India Statutory Corporation and Others (supra).

The legal consequence of Section 10(1) of C.L.(R&A )Act,1970.Has been noticed in paragraph 68, 88, 105 and 125 as follows:¬

"68.We have extracted above Section 10 of C.L.(R&A)Act1970 which empowers the appropriate Government toprohibit employment of contract labor in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be tobe taken into consideration for issuing notification under subsection (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1)of C.L.(R&A) Act 1970, prohibiting employment contract labor, is neither spelt out in Section 10 nor indicated anywhere in the Act.

In our view, the following consequences follow onissuing a notification under Section 10(1) of the C.L.(R&A) Act 1970:

(1) contract labor working in the stablishment concerned at the time of issue notification will cease to function;

(2) the contract of principal employer with thecontractor in regard to the contract labor comes to an end;

(3) no contract labor can be employed by the principal employer in any process,operation or other work in the establishmentto which the notification relates at any time thereafter;

(4) the contract labor is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labor;

(5) the contractor can utilise the services of the contract labor in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the C.L.(R&A) Act 1970 which were being enjoyed by it, will be available;

25 (6) if a contractor intends to retrench his contract labor, he can do so only in conformity with the provisions of the ID Act. The point now under consideration is: whetherautomatic absorption of contract labor working in anestablishment, is implied in Section 10 of the C.L.(R&A) Act 1970 and follows as a consequence on issuance of the prohibition notification there under. We shall revert to this aspect shortly.

88. If we may say so, the eloquence of the C.L.(R&A) Act 1970 in not spelling out the consequence of abolition of contract labor system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasonsof the Act, appears to beat Parliament intended to create a bar on engaging contract labor in theestablishment covered by the prohibition notification,by a principal employer so as to leave no option withhim except to employ the workers as regular employeesdirectly. Section 10 is intended to work as a permanentsolution to the problem rather than to provide a onetime measure by departmentalizing the existingcontract labor who may, by a fortuitous circumstancebe in a given establishment for a very short time as onthe date of the prohibition notification. It could as well be that a contractor and his contract labor who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be nojustification to prefer the contract labor engaged onthe relevant date over the contract labor employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made forautomatic absorption of contract labor in the C.L.(R&A) Act 1970.

105.The principle that a beneficial legislation needs tobe construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting Remedy or benefits for that provided by the legislature . We have already noticed above the intendment of the C.L.(R&A) Act 1970 that it regulates the conditions of service of the contract labor and 26 authorizes in Section 10(1) prohibition of contract labor system by the appropriate Government on consideration of factors enumerated in sub¬section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, in ourview, provides no ground for absorption of contract labor on issuing notification under subsection (1 ) ofSection 10. Admittedly, when the concept of automatic absorption of co ntract labor as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and theconsequence of violation of Sections 7 and 12 of theC.L.(R&AAct1970 is explicitly provided in Sections 23 and 25 of the C.L.(R&A) Act 1970, it is not for the High Courts or thisCourt to read in some unspecified remedy in Section10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labor in the establishment of principal employer or a lesser or a harsher punishment.

Such aninterpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above on consideration of various aspects, that it is difficult toaccept that Parliament intended absorption of contract\labor on issue of abolition notification under Section 10(1) of the C.L.(R&A) Act 1970.

125.The upshot of the above discussion is outlined thus: (1)(a) Before 28.1.1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government "as stood in the C.L.(R&A)Act1970, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which 27 the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition ofthat expression, the answer to the question referred toabove, has to be found in clause (a) of Section 2 of theIndustrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein nomine, or (ii) any industry is carried on:

(a) by or under the authority of the Central Government, or

(b) by a railway company; or

(c) by a specified controlled industry, then the Central Government will be the appropriate Governmentotherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the C.L.(R&A)Act 1970 prohibiting employment of contract labor in anyprocess, operation or

other work in any establishmenthas to be issued by the appropriate Government:(1) after consulting with the Central AdvisoryBoard or the State Advisory Board, as the case may be, and (2) having regard to

(i) conditions of work and benefitsprovided for the contract labor in the establishment in question, and

(ii) other relevant factors includingthose mentioned in sub¬section (2) of Section 10;

(b) Inasmuch as the impugned notification issued bythe Central Government on 9¬12¬1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of thisjudgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before28the date of this judgment, shall be called in question inany tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the C.L.(R&A)Act1970 nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under sub¬section (1) of Section 10, prohibiting employment of contract labor, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labor working in the establishment concerned.

(4) We overrule the judgment of this Court inAir Indiacase [(1997) 9 SCC 377] prospectively and declare thatany direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labor following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that thesame shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the C.L.(R&A) Act 1970 prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labor in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contractlabor for work of the establishment under a genuine contract or is a mereruse/camouflage to evadecompliance with various beneficial legislations so as todeprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so¬called contract labor will have tobe treated as employees of the principal employer who shall be directed to regularise the services of the contract labor in the establishment concerned subjectto the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

29 (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the C.L.(R&A) Act 1970 in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labor in anyprocess, operation or other work of any establishment and where in such process, operation or other work ofthe establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labor, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

33.The exposition of the judgment of the Constitution Bench ofthis Court made it clear that neither Section 10 nor any other provision in the C.L.(R&A) Act 1970 provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under Section 10(1) of CLRAAct.Consequently, the principal employer is not required or is underlegal obligation by operation of law to absorb the contract laborworking in the establishment. 34. This court in Steel Authority of India Ltd. and Others (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor in any process, operation or other work, if an 30 industrial dispute is raised by any contract labor in regard tocondition of service, it is for the industrial adjudicator to considerwhether the contractor has been interposed either on the ground of having undertaken to produce any givenresultfor the establishment or for supply of contract labor for work of the establishment under a genuine contract, or as a mere ruse/camouflage toevadecompliancewithvarious beneficiallegislations so as to deprive the workers of statutory benefits. Ifthe contract is found to be sham, nominal or camouflage, then the so-called labor will have to be treated as direct employee of the principal employer and the industrial adjudicator should direct the principal employer to regularise their services in theestablishment subject to such conditions as it may specify forthat purpose in the facts and circumstances of the case.

35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respctoftheestablishment,heprincipal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give31preference to the erstwhile contract labor if otherwise found suitable, if necessary by giving relaxation of age as it appears tobe in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.

**36.It may be noted that the learned counsel for the respondent has placed reliance on the judgments of this Court in Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another4 Hussainbhai,Calicut Vs.Alath Factory Thezhilali Union, Kozhikode and Others5 ; Indian Petrochemicals Corporation Ltd. and Another Vs.Shramik Senaand Others6 and these cases have been considered by the Constitution Bench of this Court in SteelAuthority of India Ltd. and Others(supra) of which a detailed reference has been made by us.**

**37. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labor agreement is sham, nominal or a 4 1974(3) SCC 498 5 1978(4) SCC 257 6 1999(6) SCC 439 32 mere camouflage has been examined by this Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another7 by the two judge Bench of this Court. The relevant paras are as under:¬ "**

**"38. The tests that are applied to find out whether aperson is an employee or an independent contractor may not automatically apply in finding out whether the Contract labor agreement is a sham, nominal and is a mere camouflage.**

**For example, if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.**

**39. The principal employer only controls and directsthe work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under thesupervision**

**and control of the principal employer butthat is secondary control. The primary control is with the contractor."38.**

**These are the broad tests which have been laid down by thisCourt in examining the nature and control of the employer and72009 (13) SCC 374 whether the agreement pursuant to which contract labor has been engaged through contractor can be said to be sham, nominal and camouflage.**

46. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its non-compliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which ha s been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in International Airport Authority of India case(supra) where the contract was to supply of labor and necessary labor was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labor to be sham and bogus per se .Thus, in our considered view, if the scheme of the C.L.(R&A) Act 1970 and other legislative enactments which the principalestablishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came on record, the finding which has been recorded by the CGIT under its award dated 16th September, 2009 in absence of the finding of fact recorded being perverse or being of no evidence and even if there are two views which could possibly be arrived at , the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents..

**48. It is true that judgment in Dena Nath and Others (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the C.L.(R&A) Act 1970 but if we look into the scheme of C.L.(R&A) Act 1970 which is a complete code in itself, non¬compliance or violation or breach of the provisions of the C.L.(R&A) Act 1970, it result into penal consequences as has been referred to in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act.**

18. Learned counsel for Management has further referred to a decision of Supreme Court in **SLP No. 33798-33799 2014,BHARAT HEAVY ELECTRICALS LTD. Vs MAHENDRA PRASAD JAKHMOLA & ORS.**

The relevant portion of the judgment referred to by learned counsel is being reproduced as follows:-

**"We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms. Asha Jain. In 'General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another' [2011 (1) SCC 635], it was held that the well recognised tests to find out whether contract laborers are direct employees are as follows:**

**"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workmen is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract laborers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor;**

**and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant" The expression 'control and supervision' were further explained with reference to an earlier judgment of this Court as follows:**

**"12. The expression "control and supervision" in the context of contract labor was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union thus: (SCC p.388, paras 38-39) "38.... if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.**

**39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him.**

**But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) but that is secondary control. The primary control is with the contractor." From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor 'what to do' after the contractor assigns/ allots the employee to the principal employer. This is precisely what paragraph 12 explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workmen has been assigned to the principal employer to do a particular work.**

**We may hasten to add that this view of the law has been reiterated in 'BalwantRaiSaluja and Another v. Air India Limited and Others' [2014(9) SCC 407], as follows:**

**"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:**

**(i) who appoints the workers;**

**(ii) who pays the salary/remuneration;**

**(iii) who has the authority to dismiss;**

**(iv) who can take disciplinary action;**

**(v) whether there is continuity of service; and**

**(vi) extent of control and supervision i.e. whether there exists complete control and supervision.**

**As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]." C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) However, Ms. Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL."**

19. Another case **Bengal Nagpur Cotton Mills 2011 Vol.1 SCC 635 (para-10, 14, 16, 8 and 12)** referred to by learned counsel is also the relevant paragraphs of which are being reproduced as follows:-

**"The expression 'control and supervision' in the context of contract labor was explained by this court in International Airport Authority of India v. International Air Cargo Workers Union [2009 (13) SCC 374] thus: "If the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."**

20. The case of **Himmat Singh vs ICI India (2008) 3 SCC** Preferred to by learned counsel for Management the referred paragraphs of the judgment are being reproduced as follows:-

**"A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: "The labor court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the**

**petitioners do may be similar to the work of the workmen of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- ? did not have permanent work; ? were engaged in intermittent work and ? themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labor Contract Act and got benefit under the same." 9. Similarly, the Labor Court noted that contractor Rehman had applied to the administration for licence under the State Contract Labor Act and considering the nature of the contract licence has been granted to him. 10. In Steel Authority of India Ltd. v. Union of India &Ors. [2006(12) SC 233] it was inter-alia held as follows: "The workmen whether before the Labor Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 3 of 3 allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication." 11. In view of the factual position highlighted above and the ratio of the decision in Steel Authority's case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.**

20 .Airport **Authority of India vs. IndianAirportKamgar 2011 Vol.1 L.L.J page-II Bombay para 32,33,37** referred to by learned counsel for the Management. Wherein, award allowing reference regarding same character of engagement of contract labor was held now allowed in light of facts peculiar to the case referred.

Another case**of Post Master General vs. Tutudas(2007)5 SCC 317.**

Wherein, it has been held that **illegal/improper grant of regularization to similarly situated persons does not create and entitlement to regularization on the ground of equal treatment under article 14 of constitution as equality is a positive concept and can not be invoked where any illegality has been committed or where no legal right has been established.**

21. In another case **Dhampur Sugar Mills VsBhola Singh AIR 2005 SC page no 1790,** referred to by learned counsel for management it has been laid down that:

**completion of 240 days in continuous service may not itself be ground for regularization of service particularly in case when workmen had not been appointed in accordance with rules**.

22. The case of **HaldiyaEmployees Union Vs. Indian Oil Corporation 2005 CAB IC page 2078 SC** also referred to by learned counsel of which relevant paragraphs 15,16,17 & 20 specifically referred by the learned counsel are being reproduced as follows:-

**"No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. case (supra) is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations are concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages etc. and also for depositing the provident fund contributions with authorities concerned. Contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by**

**reason of the work provided/assigned under the contract brought by employees of the contractor, third party or by Central or State Government Authorities. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employee of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering the proper service to the employees of the management."**

Following settled propositions of law emerges:-

**A. The point whether the contract is sham, bogus and camouflage will arise only when the work contract which was allotted to the contractor was of non-prohibited category and also in cases where though the work contract which was allotted to the contractor was of non-prohibited categoryit become in prohibited category later on under the notification issued by appropriate Government under Section 10(1) of C.L.(R&A) Act 1970.**

**B. In reaching at a point whether the work contract was sham bogus and camouflage, the relevant facts for consideration will be as to firstly,who was to exercise the effective supervision and control and secondly,at whose site, the workmen were engaged, thirdly, who paid the wages and fourthly, who provided instruments and training and other facts like this is settled in the aforesaid judgments. It is also settled that what is the effective control and supervision from industry to industry and control and supervision is not only criteria for reaching at the conclusion whether the work contract was sham, bogus or camouflage also what effective control and supervision is shall differ from industry to industry, fact wise.**

23. Now coming to the facts and evidence in the case in hand, in the light of above mentioned settled preposition of law and relevant provision, the case of workman union on this point is that they were engaged by management and just to deprive them of their legally admissible rights the Management set up a camouflage contractor who has given the color of work done by contract labour. Thus according to the workman union, the contract is nothing but a smoke screen in the eyes of law , it is sham and bogus just to deprive the workman of their legally admissible claims. It has come in evidence that these workman used to do this job of tub repairing at the sites of Management also with the instruments and material for its work was provided by the Management. Further more they were doing their duties under the supervision of Management. They imparted vocational training and service by Management of SECL. The case of the Management is that it had only a limited supervision and these workmen in fact worked under the control and direction of the contractor also. It has been submitted that the control and supervision of these workman by Management was provided in the work agreements. Learned counsel has referred to para-18 and 21 of the case "**General Manager, Oil and Natural Gas Commission, Silchar Vs. Oil and Natural Gas Commission Contractual workers union, (2008)12 Supreme Court Cases 275**".

The relevant portion of the judgment is quoted below: -

"**Para-18: ..... We, however, believe that this present case is not one of regularization simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were the employees of the former, a claim to be treated on a par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference.**

**Para-21: Even ONGC had admitted that since 1988, there was no licensed contractor and that wages were being paid through one of the leaders of Union, and one person who was named as contractor, was in fact himself a workmen whose name appeared in acquaintance roll. Real issue therefore was regarding status of workmen as employees of ONGC or of contractor, and it having found that workmen were employees of ONGC, they would ipso facto be entitled to benefits available in that capacity.Issue of regularization would therefore pale in insignificance. The Industrial Tribunal and Division Bench of the High Court were justified in lifting the veil in order to determine nature of employment."**

24. Learned Counsel for Management has referred to Judgment of Supreme **Court Oshiar Prasad &Ors. Vs. Employees in relation to management Sudam-D coal washery of BCCI Dhanbad- 2015-ILLJ-513SCpara-25 which is as follows-**

> **It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference.**

25. It is further submitted by learned counsel for workmen union that the burden of proof lies on management to prove that the concerned workers are contract labor and also the contract is genuine. Union placed reliance on the judgment reported in the case of**"Caparo Engineering India Limited Vs. Pradhanmantri Engineering ShramikSanghthan, 2019 (1)MPLJ 147**." The relevant portion is reproduced below: -

> **"(b) Evidence Act, S.102 – Burden of proof – Petitioner-company's case that employees are contract labor – therefore, Labor Court has rightly shifted burden on them to establish this – No error committed by Labor Court while directing petitioner to lead evidence and prove that respondents are contract laborers (para-31)"**

26. The management has produced its certificates of registration under orders of Court this certificate if of date 13-1-1986, the name of the Contractor Suresh Kumar does not find mention in it, though there are as many as nine Contractors mentioned in it. On the other side the management witness has corroborated the case of the Management that in fact Suresh Kumar was a contractor and was awarded contract of tub repairing for which different work orders were signed between the Management and him in different periods. These work orders and payment vouchers have been referred already.

27. From the above description evidence, the following proved fact come out:-

**A.The Certificate of Registration dated 13-1-1986 does not contain the name of contractor Suresh Kumar in the list of Contractors mentioned in the certificate.**

28. Reference of Section 2(h) of Indian Contract Act requires to be taken here which define all the contract as it is so because C.L.(R&A) Act 1970 does not define contract. Section 2(h) reads as under:-

> **"Contract is an agreement enforceable by law."**

According to **Section 23 of Indian Contracts Act** which deals with the as what consideration and object are lawful and what not is being reproduced as follows:-

> "**what considerations and objects are lawful and what not-....**
>
> **The consideration or object of an agreement is lawful unless-**
>
> **It is forbidden by law, or**
>
> **Is of such nature that,if permitted, it would defeat the provision of any law or is.....**
>
> **....."**

**Similary Section 24** of the said Act is also being reproduced as follows:-

> "**If any part of a single consideration for one or more objects, or any or any part of several considerations for a single object, is unlawful, the agreement is void."**

29. In the light of the above noted provisions of Indian Contract Act since even the first work agreement between the parties was against prohibitions of law as it defeats the provisions of NCWA and Section 10(1) of the C.L.(R&A) Act 1970 at the very time it was entered into by the parties because these prohibitions were enforced before the agreement was entered into by the parties will be void abintio in law meaning thereby there is no contract at all as per law between the parties. Same will be the fate of other so called work contracts entered into by the parties after the first work agreement. Thus it is not legally permissible on the part of Management to contend that all the work of supervision, training and other actions detailed earlier were in the light of terms of the work agreement because the said work agreement are void ab initio, as discussed above right from the date of the agreements. The natural inference/consequences of this will be that it will be deemed that in fact the control of supervision of workers by Management, training of workers management, providing tools and instruments by Management etc. where done by the Magistrate on their own. It cannot be taken to be done if the work contract is void abinitio, admitted is the fact between the parties is that the said workmen worked on the sight which was owned by the Management i.e. is to say that the work place was the premises of Management i.e. principal employer.

30. Hence following facts are held proved in the light of above discussion which is as follows:-

**(1) The work agreement was violative of legal provisions and prohibitions from the very first date the parties entered into the agreement.**

**(2) Since the object of the work agreement was to defeat the provisions of law i.e. to say not lawful hence all the work agreements are void abintio from their date of inception.**

**(3) As the work agreement are void abinitio, hence cannot be held that Management control and supervision and other actions as discussed above, was done by Management in the light of the terms of the work agreement.**

31. Accordingly, in the light of above provisions, this Tribunal is constrained **to hold that the work agreements between the principal employer and allotted to contractor was sham, bogus and camouflage, defeating the provisions of law, the sole aim of which was to deprive the workmen of their legally admissible claims, stands proved**.

**Issue No.2 is answered accordingly**.

32. **ISSUE No.3:-**

In the light of the findings recorded earlier at Issue No.1 & 2 the workmen who were engaged via the sham and bogus agreement as a camouflage shall be deemed to be under employment of the principal employer which is SECL and are held so.

33. Reference of Section 2(oo) of Industrial Disputes Act, Section 25(b)(2), Section 25(f) and Section 25(N) of Industrial Dispute Act,1947 are being reproduced as follows:-

**2[(oo) "retrenchment" means the termination by the employer of the service of a workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workmen; or (b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf;**

**25F. Conditions precedent to retrenchment of workmen.—No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workmen has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; (b) the workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].**

**2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have**

been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workmen who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Conditions precedent to retrenchment of workmen.—No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workmen has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; (b) the workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to

**the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workmen who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]**

**Section 25.B.(Definition of continuous service):-**

**Where a workmen is not in continuous service within the meaning of clause(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-**

**(a) For a period of one year, if the workmen, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-**

**(i)one hundred and ninety days in the case of a workmen employed below ground in a mine; and**

**(ii)two hundred and forty days, in any other case;**

(b)For a period of six months, if the workmen, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

**(i)ninety-five days , in the case of wrkman employed below ground in a mine and**

**(ii)one hundred and twenty days, in any other case.**

**(i)he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders)Act,1946(20 of 1946), or under the Act or under any other law applicable to the Industrial establishment;**

**(ii)he has been on leave with full wages, earned in the previous years;**

**(iii)he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and**

**(Iv)In the case of a female, she has been on maternity leave; soi however, that the total period of such maternity leave does not exceed twelve weeks.**

**34.** The workmen witnesses have stated that they worked continuously and documents produced by Management regarding contract and execution of work also states that they worked continuously in the years preceding date of their disengagement. There is nothing on record to indicate otherwise, hence, their case that they worked for a period of 190/240 days in the year preceding their disengagement is held proved. **Since it is not the case of the Management that any notice or compensation was given to the workmen, their disengagement is held against law and fact.**

**Issue No.3 is answered accordingly.**

**35. ISSUE NO.4:-**

In the light of the findings recorded above, the point needs to be responded is as to what relief these workmen are entitled. For the legal consequences arising out of engagement of contractor workers when the contract is found a camouflage have been dealt with in five Judges Bench of Case of **Steel Authority of India Supra in para 125 (5 & 6) which is being reproduced as follows:-**

**On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.**

**(6) .....**

36. Further, there is an Award in an Industrial Arbitration between the management of SECL i.e. the Management in the case in hand and tub repairing workers engaged through contractors in Hasdeo Area of the management which is names as Bhave Award. A copy of this Award is on file. In this Award around 200 tub repaid workers were held entitled to be departmentalized as Category-II Mazdoor and were also held entitled to all the consequential benefits admissible to all the Category –II workers mazdoor. The only difference between those tub-repair workers covered under the said Award dated 13-8-1990 and tub-repair workers in the case in hand is that the former were engaged in Hasdeo Area of SECL whereas the later were engaged in the Chirmiri Area of SECL, hence, in such circumstances the applicant workman , the tub-repairing workers in the case in hand are held entitled to parity with other counter parts covered under the Award.

37. Thirdly, the Tub-repair mazdoor is classified as a cadre in Category-2 in the nomenclature mentioned in the job description and classification of coal employees in force since 15-9-1986. The Rub-repairing Mistri is mentioned at Serial No.15 of Category-iv workers. Further more, it is the case of the workman union that regular work force is employed by Management for the job of Tub-Repairing in other areas/sub-area which is not specifically disputed by Management. This fact finds mention in the Bhave Award, also as mentioned above. These facts also support the finding holding the 10 tub repair workers in the case in hand entitled to be classified in Category-II from the date of reference.

38. One more fact remain to be considered that these workmen have been engaged in the year 1992 and now it can be assumed that after a lapse of about 30 years and also keeping in mind that they were engaged in 1984, they would have attained the age of superannuation. Hence the workmen are held entitled to be reinstated with all back wages and benefits admissible to Category-II workers as mentioned in Bhave Award and also post retiral benefits if any till the date of their superannuation/death.

**39.** The workmen Union who has espoused the case of these workmen since the last 30 years is also held entitled to cost of litigation quantified at Rs.50,000/-. **Issue No.4 is answered accordingly.**

40. On the basis of the above discussion, following award is passed:-

**A. The action of the management of Chirmiri Colliery of Chirmiri Area of SECL in employing 11 workers on the tub repairing work between the period 1984 to 1992 as contract labour was a camouflage.**

**B. The 11 workers are entitled to be treated at par with tub-repairing workers covered in Bhave Award i.e. Reference No.1/1989 dated 30-8-1990 and are held entitled to be departmentalized as Category-II employees from the date of their first appointment also to all consequential benefits. They are further held entitled to be reinstated with all back wages and pre as well as post retiral benefits mentioned above till their date of their superannuation/death.**

41. Let the copies of the award be sent to the Government of India, Ministry of Labour& Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 12-10-2022

नई दिल्ली, 27 अक्तूबर, 2022

**का.आ. 1059.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय** जबलपुर के पंचाट **(संदर्भ संख्या 70/1996)** को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/53/2021-आई. आर. (सीएम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th October, 2022

**S.O. 1059.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 70**/1996) of the **Central Government Industrial Tribunal-cum-Labour Court JABALPUR** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on 1**2/10/2022.**

[No. L-22012/53/2021 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/70/2021

Present: P.K. Srivastava, H.J.S..( Retd)

The Sanyukt Morcha

BMS(ATK)

C2 Evam Entak

Amadand OCM

PO:Malga, District Annupur ... Workman

**Versus**

Upshetriya Prabhandak

Amadand OCP

SECL, PO Malga

District Annupur ... Management

### AWARD

**(Passed on 21-9-2022)**

As per letter dated 9/11/2021 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/53/2021 (IRCM-II). The dispute under reference relates to:

> "***Whether the demand of the Joint Front Secretary, BMS AITUC, CITU and INTUC, Amadand OCP, Po-Malga, district Annupur (MP) against the management of Sub Area manager, Amadand Open Cast project of SECL Jamuna & Kotma Area, PO-Malga District Annuppur (MP) for payment of salary of 15-8-2021 as per previous practice is legal, proper and justified? If yes, what directions are necessary in the matter .***"

1. The Secretary of the Union has filed his affidavit and statement stating that the dispute under reference has been settled between the management and the Workman Union and there is no dispute at preset between the parties.

2. The above fact of no dispute between the parties has been conceded by the management representative present and Shri A.K.Shashi learned counsel for the management.

3. Hence holding that the dispute under reference ceases to exist now as the demand has been made by the management, a No Dispute Award is passed.

4. The Reference is passed according with a No Dispute Award..

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 21-9-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1060.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **जनरल मैनेजर (पर्सनल), मेसर्स भिलाई स्टील प्लांट, दुर्ग, (छत्तीसगढ़)** के प्रबंधतंत्र के संबद्ध नियोजकों और **जनरल सेक्रेटरी, स्टील एम्प्लाइज यूनियन, दुर्ग (छत्तीसगढ़)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या (सीजीआईटी/एलसी/आर/28/2017)** प्रकाशित करती है।

[सं. एल-25011/34/2016-आई. आर. (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1060.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/28/2017)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The General Manager (Personal), M/s Bhilar Steel Plant, Durg (Chhatisgarh)** and **The General Secretary, Steel Employees Union, Durg (Chhatisgarh).**

[No. L-25011/34/2016-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/28/2017**

Present: P.K. Srivastava, H.J.S..( Retd)

The General Secretary
Steel Employees Union,
Bhilai (INTUC), Qtr No.8/B, Street No.24, Sector-1,
Bhilai, District Durg (CG)-490001 ... Workman

**Versus**

The General manager(Personal)
M/s Bhilai Steel Plant,
SAIL PO-Bhilai,
District Durg (CG)-490001. ... Management

**AWARD**

**(Passed on this 17th day of 2022)**

As per letter dated 31-3-2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-25011/34/2016-IR(M). The dispute under reference relates to:

"**Whether the action of the management of Bhilai Steel Plant, Bhilai in not processing /denying the case of compassionate appointment to Shri Deepanjan S/o Late Shri Dilip Kumar Purkait an ex-employee of Bhilai Steel Plant on the ground of ineligibility owing to minor status, lack of required educational qualification and alleged time barred application etc. is legal and justified? If not to what relief the dependent son of the deceased workman is entitled to?.**"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. According to the workman Union Dilip Kumar Purkait was declared medically unfit on 16-10-2009 and was discharged from the service of Management on this ground vide letter of management dated 21-10-2009. He was further informed by management that he could avail the benefits of Employee Family Benefit Scheme(EFBS), hereinafter referred to by the word Benefit Scheme. A format was sent to him on 23-10-2009. He filed a application/letter on 26-10-2009 that he is rather interested in compassionate appointment of his dependent son Deepanjan and is not willing to take benefits under the Benefit Scheme. He further requested that since his son was a minor at the time presenting the application on 26-10-2009, he be given compassionate appointment after he become major. Thereafter, the workman Dilip died on 6-2-2010. It is the case of the workman Union that after the death of the workman Dilip, his widow filed an application dated 10-1-2012 with the Personnel Department of the Management stating the aforesaid facts and requested that since her son will be attaining maturity on 28-6-2012, on completing 18years of age, he be given compassionate appointment in place of his medically disabled father , now deceased. This application was returned to her by the Personnel Manager with an endorsement to submit after completion of 18 years of age . According to the workman Union, the son of the deceased workman Deepanjan and his mother kept requesting for compassionate appointment. Accordingly, the Management finally informed them by their letter dated 25/26-7-2012 stating that their prayer for compassionate appointment could be considered only within six months of being declared permanently unfit, hence his prayer for compassionate appointment could not be considered. The management further informed the family of the deceased workman vide its letter dated 3-12-2012 that on reconsideration of the prayer for compassionate of Shri Deepanjan, the son of the deceased workman, it was found that his case was neither covered by the permanent medically unfit cases, rules of Compassionate appointment dated 23-5-2009 nor Rules of 1-1-2011. According to the workman union, the Management rejected the first application of the applicant dated 26-10-2009 on the ground that it could be considered only within six months and there were no chances of the applicant Deepanjan attaining age of maturity within six months. He would have opted alternate routes namely benefits for the Benefit Scheme, by not doing so, the Management cannot reject the application for compassionate appointment later on when it was filed by the applicant, hence the action of the management in refusing compassionate appointment on grounds as mentioned above, is arbitrary and is against law. Accordingly it has been prayed that holding the son of the deceased workman Deepanjan, entitled to compassionate appointment, the reference be answered in favour of the workman Union.

3. The work Union has filed photocopy letter of management dated 16-10-2009, declaring the workman Dilip permanently medically unfit. The order of the Management dated 21-10-2009 discharging the workman Dilip from the service on the ground of permanently medically unfit and on 23-10-2009 informing the workman Dilip regarding his option to become a Member of the Benefit Scheme. Letter of the workman Dilip to Management informing the Management that inspite of the Benefit Scheme, he is more interested in compassionate appointment of his son Deepenjan after he attains maturity in 18 years. The Medical Certificate of the workman Dilip, letter of AGM Personnel to widow of the deceased workman dated 25-26/7/2012 informing her that her prayer for her compassionate appointment of her son could be considered within six months. Copy of letter dated 3-12-2012 sent by AGM Personnel informing that the case of compassionate appointment of her son would be considered within six months. Copy of letter dated 3-12-2012 by AGM Personnel informing that the case of compassionate appointment of her son could not be accepted as it is not tenable as per Scheme dated 23-5-2009 or Scheme dated 1-1-2011. She was advised for opting benefit scheme, all admitted by management, hence marked as W1 to W7 respectively. Exhibit W-8 is an application under RTI filed with Management. Exhibit W-9 and W-10 is information furnished by Management in RTI. Exhibit W-11 is also letter in RTI Exhibit W-2 to W-17 and copies of different rules.

4. According to the Management, compassionate appointment is given as per Scheme for providing appointment. Employees who have been declared medically unfit are not entitled to get their dependent employed when their case is not covered under the Scheme. The workman Dilip Purwait was declared permanently medically unfit due to chronic renal failure on 14-10-2009. He was struck off the rolls of BSP Management on 21-10-2009 as per the Scheme of compassionate appointment notified on 23-5-2009. As per Rules of the Company compassionate appointment is considered within six months of declaration of Permanent Medically Unfit and that the applicant claiming compassionate appointment must full fill the conditions of qualifications and age. The applicant Deepanjan Purkait Matriculate on 20-5-2010 had completed 18 years of

age on 27-6-2012. Since the applicant had neither attained the age of 18 year and nor was a matriculate, qualifying under the Scheme within the period of six months as mentioned in the Scheme, his case was not covered for compassionate appointment . As per guidelines for dealing with compassionate cases issued vide Circular dated 1-1-2011, such a request in medical validation case would be considered during the financial year and can be carried forward to one financial year and after that it will lapse. Accordingly, the applicant was not found fit for compassionate appointment. The Management has thus prayed that the reference be answered against the workman, holding the action of the workman not in accordance with law.

5. The Management has field and proved Exhibit M-1 guidelines for dealing with the case of compassionate appointment issued on 31-8-2021.

6. The workman Union has filed rejoinder wherein it reiterated its case.

7. The workman Union has examined applicant Deepanjan himself on oath and he has been cross-examined by Management. Rumpa Purkait is mother of applicant and wife of deceased workman has also been examined by workman Union as witness . She has been cross-examined by the Management.

8. The Management has examined its witness V.Kumar Senior Manager Personnel on oath who has been cross-examined by the workman Union .

9. I have heard arguments of learned counsel for the workman Union Shri Abhilash Dey and learned Counsel for the Management Shri A.K.Shashi. Learned Counsel for the workman Union has filed a short written argument which is on record. I have gone through the written argument also.

10. I have gone through the record and in the light of the rival arguments, the following issues arise for determination:-

**1. Whethter the action of Management in refusing compassionate appointment to Deepanjan Bhattacharya, son of deceased workman Dilip who was struck off the rolls due to permanent medical unfitness, is justified in law?**

**2. Subject to finding on Issue No.1, whether the application Deepanjal is entitled to any relief?**

**11. ISSUE NO.1:-**

Facts admitted by parties are **firstly,** that the workman Dilip was declared permanently unfit by the management on 16-10-2009. **Secondly,** he was struck of the rolls by the Management on 21-10-2009 due to his permanent medical disability. **Thirdly,** he was not a Member of the Benefit Scheme on the date his name was struck of the rolls, hence management by way of sending him communication with copy of form of Benefit Scheme dated 23-10-2009 informed him that he could take benefit of Benefit Scheme by being member of this Scheme and further he filed an application for compassionate appointment of his son who was minor on the date of application and requested that instead of seeking benefits under the Benefit Scheme, he was seeking compassionate appointment for his son Deepanjan after he attains age of 18 years. The death of the workman Dilip on 6-2-2010 is also not disputed between the parties. On the date of discharge of the workman Dilip and on date he filed his application for compassionate appointment, the guidelines under the Scheme provide that the compassionate in permanent medically unfit cases issued by management on 13-5-2009 was in force. A photocopy of these guidelines is also on record as Exhibit W-12. On perusal of these guidelines reveals the following facts:-

There is a list of ailments , Kidney ailment is one of those element. The compassionate appointment to a dependent son of an Ex-employee who has been declared permanently medically unfit due to any one of these ailment, only could be provided. This is also established on record that the deceased workman Dilip was declared permanently medically unfit due to chronic renal failure, hence his dependent was entitled to be considered for compassionate appointment as per the Rules of 2009.

12. The another condition for compassionate appointment provided in the Rules is that :- Where the ex-employee of dependent have opted of Benefit Scheme, their case will be considered for compassionate appointment. This fact is also admitted between the parties that in the case in hand neither the workman during his life time or his dependents had opted for Benefit Scheme. Another conditions for consideration for compassionate appointment was in the Scheme that the applicant i.e. Dependent of the Ex-employee himself have minimum qualification of matriculation and that the application from the dependent should reach the recruitment section within six months of declaration of permanent medically unfit.

13. This case is also not disputed that the application was submitted before Management for compassionate appointment on 26-10-2009 that is within six months of declaration of the workman Dilip to be permanently medically unfit. This first application of compassionate appointment dated 26-10-2009 is Exhibit W-4 itself states that the son of the employee was not of 18 years of age and in the statement of witnesses from workman, it is established that he completed his Higher Secondary School in the year 2010. The Management witness has stated that the first application of compassionate appointment was not filed with the recruitment department,

rather it was filed before Deputy manager Personnel Medical Department. The Medical Department could have well sent it to the Recruitment Section and if was not sent by the Medical Department to the Recruitment Department, it cannot be said to such a fault justifying non-consideration of his application when both the departments worked under the same Management.

14. The rules of 2009 do not provide as to what is to be done when the dependents of a permanently medically unfit employee is discharged on this ground, are minor at that time and what procedure should be complied with respect to compassionate appointment of dependents of such a an employee. This Rule of Year 2009 has been superseded by Guidelines regarding compassionate appointment cases issued by Management on 28-6-2011 Exhibit W-15 on record. Rule 7A of this circular states that "**for consideration of compassionate Appointment in such a case family Members who have minimum 18 years of age and should have minimum matriculation required though this will not be applicable to the dependent of employees of Mines and Colliery.**

15. Rule 5.2.3 **states that if the dependent is yet to attain matriculation qualification as per Clause 7B, he/she may be considered for providing compassionate appointment, if not other dependent member is available in the family with matriculation or higher qualification , however if he /she fails to acquire the matriculation qualification within two years of training period as provided under Cluse-6B, the training period shall get extended till he/she acquires the matriculation qualification.**

16. These Rules of 2011 came into effect from 1-1-2011. The case of the Management is that the prayer for compassionate appointment of dependent son Deepanjan of deceased employee Dilip was considered in the light of these Rules also and could not be carried forward because it was not considered during the financial year in which the first application for compassionate appointment was filed by the employee Dilip when he was alive. According to the management, the employee expired on 6-2-2010 his son had completed 18 years of age. His Widow Rupma Purkait filed an application for employment on compassionate ground. this application was returned by recruitment section with the remark that compassionate appointment should be considered within six months of declaration of permanent medically unfitness. Needless to say here that the first application for compassionate appointment was filed within six months of declaration of employees as permanently medically unfit which was yet not disposed when the Management took the aforesaid decision. Thus circular of year 2009 is silent about the course of action to be adopted when the dependents are minor and moreover new rules were made in force from 1-1-2011 which were by another circular of Management. Clause 5.3.3 of 2011 Rules provides that date of consideration under the guidelines shall be the date on which the Committee declares an employee as medically invalid. The 2009 Rules are silent regarding the course of action to be adopted when the dependent of such an employee seeking such an employment is either a minor or does not have the minimum qualification for the post. The Scheme for compassionate appointment is a welfare Scheme to save the family of the worker declared permanently medically unfit or has died an untimely death from the vagaries and hardships in such a situation, hence, any interpretation favoring the workman side should be adopted in case of any ambiguity in Rules. Learned Counsel for applicant has referred to case of **State of Himachal Pradesh Vs. Shashi Kumar**(2019) 3 SCC 653, Where in it has been laid down that when all the dependents are minors the time limit for submission of application may be extended till they attain age of majority. Keeping this view in mind and also keeping in mind that justice and equity also mandate the same action, the action of the Management in refusing the applicant Deepanjan to offer him appointment on compassionate basis after he attained 18 years of age cannot be said to be lawful. Accordingly Deepanjan is held entitled to be offered letter of compassionate appointment being dependent of his deceased father who was discharged from rolls on the grounds of being permanently medically unfit. **Issue No.1 is answered accordingly.**

**17. ISSUE NO. 2:-**

On the basis of finding recorded on Issue No.1, the action of management in not offering compassionate appointment to dependent Deepanjan S/o of workman Dilip Kumar is held illegal and unjust in law. Consequently Deepanjan is held entitled to be offered employment on compassionate basis by the management within 30 days from the date of publication of Award in official gazette. He is also held entitled to litigation cost of Rs.10,000/- from the management.

18. On the basis of the above discussion, following award is passed:-

**A. The action of the management of Bhilai Steel Plant, Bhilai in not processing /denying the case of compassionate appointment to Shri Deepanjan S/o Late Shri Dilip Kumar Purkait an ex-employee of Bhilai Steel Plant on the ground of ineligibility owing to minor status, lack of required educational qualification and alleged time barred application etc. it is held to be illegal and unjust.**

**B. The workman is held entitled held entitled to be offered employment on compassionate basis by the management within 30 days from the date of publication of Award in official gazette. He is also held entitled to litigation cost of Rs.10,000/- from the management.**

19. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 17-10-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1061.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **श्री मनीष सिंह बनाफर, माइंस ओनर, मेसर्स खामरिया डोलोमाइट माइन (बाराद्वार), छिंदवाड़ा (छत्तीसगढ़)** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री फूल चंद साहू, सयुक्त खदान मज़दूर संघ (एटक), छिंदवाड़ा (छत्तीसगढ़)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या सीजीआईटी/एलसी/आर/14/2017)** प्रकाशित करती है।

[सं. एल-27011/3/2016-आई. आर. (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1061.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/14/2017))** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **Shri Manish Singh Banafar, Mines Owner, M/s Khamariya Dolomite Mine (Baradwar), Chhindwara (Chhatisgarh)** and **Shri Phul Chand Sahu, Sayukta Khadan Mazdoor Sangh (AITUC), Chhindwara (Chhatisgarh).**

[No. L-27011/3/2016-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

### NO. CGIT/LC/R/14/2017

Present: P.K. Srivastava, H.J.S.(Retd.)
Shri Phul Chand Sahu,
Sayukta Khadan Mazdoor Sangh (AITUC),
Ward No.11, Jhoolkadam, Sakti,
Distt. Janjgir - Champa
Chhindwara – 495689 ...Workman

**Versus**

M/S Khamariya Dolomite Mine [Baradwar],
Shri Manish Singh Banafar, Mines Owner,
Vill. & P.O. – Thathari, Tehsil - Jaijaipur,
Distt. Janjgir - Champa
Chhindwara – 495689 ...Management

### AWARD

**(Passed on this 30th day of September-2022)**

1. As per letter dated 13/02/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No.L-27011/3/2016 - IR(M). The dispute under reference relates to:

**"Whether the action of the management of Shri Manish Singh Banafar, Mine Owner, Khamariya Dolomite Mines as Janjgir-Champa (CG) in terminating the services of Shri Phul Chand Sahu, Driver who was engaged through the Contractor w.e.f 10.02.2014 without following the provisions of Section 25-F of ID Act, 1947 is legal and justified, if not, to what relief the workman is entitled and from which date.?"**

2. After registering the case on the basis of reference, notices were sent to the parties and were served on them. Ist party workman failed to appear and participate in reference proceeding despite of repeated notices. 2nd party management appeared but did not file any Written Statement.

3. Since the initial burden to prove claim is on workman in which he has failed, reference deserves to be answered against him and is answered accordingly.

4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 30-09-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1062**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **जनरल मैनेजर, भिलाई स्टील प्लांट, दुर्ग (छत्तीसगढ़)** के प्रबंधतंत्र के संबद्ध नियोजकों और **ऑर्गेनिशिंग सेक्रेटरी, हिन्दुस्तान स्टील एम्प्लाइज यूनियन, दुर्ग (छत्तीसगढ़)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या (सीजीआईटी/एलसी/आर/30/2007)** प्रकाशित करती है।

[सं. एल-27011/11/2006-आई. आर. (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1062.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/30/2007)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The General Manager, Bhilai Steel Plant, Durg (Chhatisgarh)** and **The Organising Secretary, Hindustan Steel Employees Union, Durg (Chhatisgarh).**

[No. L-27011/11/2006-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/30/2007

Present: P.K. Srivastava, H.J.S..( Retd)

The Organising Secretary,

Hindustan Steel Employees Union,

P.O. Dallirajhara,

District Durg (CG) ... Workman

**Versus**

The General Manager

Bhilai Steel Plant

Durg (C.G.) ... Management

**AWARD**

**(Passed on 24-8-2022)**

As per letter dated 14-2-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-27011/11/2006-IR(M) The dispute under reference relates to:

"**Whether the action of the management in relation to Rajhara Iron Ore Mines of Bhilai Steel Plant in modifying the terms of appointment of Shri M.K. Sahu Sr. TOT (HEME) by adding Clause 5.2 to the same through their letter No.MHQ/PERS-II/97/218, dated 1/3/97 is legal and justified?If not to what relief is the concerned workman entitled?. 2 Whether the action of the management in relation to Rajhara Iron Ore Mines of Bhilai Steel Plant in not granting Shri M.K. Sahu, Sr. TOT (HEME), Promotin to Grade L-7 on completion of 4 years in Grade L-6 is legal and justified? If not, to what relief is the concerned workman entitled" .**"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that he was employed through Employment Exchange after passing selection test and joined as a Senior TOT to work in the Captive Iron Ore Mine of the Management Company at Ranjhara on 22-11-1996. He was required to undergo 18 months training on a monthly stipend according to the appointment offer and was to be given regular posting after successful training. He was due to complete his training of 18 months on 18-5-1998. In April-1998 he was called to appear for final test for his regular appointment. He cleared the test. The Management issued an order on 21-11-1998 extending his training for six months on the ground that he did not obtain a valid heavy vehicle driving license. He was given work of Senior Shovel Operator for more than one year, after completion of 18 months of training. On 13-7-1999 the Management issued order appointing him on regular basis in S-6$^{th}$ Grade. The order stated that the workman was given regular Grade-6 w.e.f. 31-12-1998 notionally but the actual monetary benefit will accrue from date of issue of order. According to the workman, in the initial appointment offer dated 8-11-1996 there was no such condition for securing heavy vehicle driving license. This condition was added during his training period by amendment issued in the form of addendum dated 1-3-1997 to the initial offer of appointment. In April-1999, he underwent training for driving heavy vehicle and got heavy vehicle driving license in the year 2000. According to the workman, the Management acted in violation of appointment offer resulting into prejudice to the workman in the form of loss of wages and subsequent financial benefits. Accordingly, it has been prayed that the condition of having heavy vehicle driving license imposed by Management by way of addendum be declared illegal and the applicant be granted the relief of placement of regular Grade-6 w.e.f from 22-5-1998 with consequential benefits and back wages.

3. The case of the Management is mainly that at the time when applicant workman joined as TOT, accepting all the terms and conditions of offer of appointment, he cannot back track. If the post and conditions were not acceptable to him, he had the option not to join the job. According to the Management the condition required that the incumbent should have a valid heavy vehicle driving license before completion of training period. The workman did not have this license till he completed the training. When he obtained the license, he was appointed on the post of Sr. TOT giving him notional benefits from back dates. Accordingly, the Management has prayed that the reference be answered against the workman.

4. The workman filed a rejoined wherein he reiterated his case.

5. The workman did not lead any oral evidence. The Management filed affidavit of its witness Jai Prakash and proved documents Exhibit M1 to M-14, to be referred to as and when required. The workman filed photocopy of appointment offer dated 3-11-1996 admitted by the Management. He also filed photocopy documents admitted by management marked as Exhibit W1 to W7.

6. The workman never appeared for cross-examination of Management witness, hence his opportunity of cross-examination was closed. He did not appear at the time of arguments, hence argument of learned counsel for the Management was heard. The workman did not prefer any written argument inspite of opportunity given.

7. I have perused the record in the light of arguments.

**8. The reference is the issue for determination, in the case in hand.**

9. The basic burden to prove its claim is on workman. He has not lead any oral evidence. The appointment offer dated 8-11-1996 contains terms and conditions of appointment. This document is admitted by Management. It does not contain the condition of getting heavy vehicle driving license during the training period. Exhibit W-2 is the letter of Management sent to the workman on 20-11-1998 in which his training has been extended on the ground that he failed to obtain a valid heavy vehicle driving license. Exhibit W-3 is the Office Order dated 13-7-1999 appointing the workman as Sr. TOT with a condition that the probation period will be six months from the date of issue of this order which may be further extended, in case the workman fails

to produce heavy vehicle driving license. Exhibit W-4 and Exhibit W-5 are letters of Management, sent to workman specifying that condition of obtaining heavy vehicle driving license before completion of. Training period is added as addendum. Almost the same documents have been filed by the management also.

10. The question for determination arises here is as to whether adding the condition for obtaining valid heavy vehicle driving license is a condition for appointment when it was not in the initial appointment offer as justified in letter or not . Exhibit M-8 is the regulations of Management for the post of Sr. Operator TOT(HEME). It is mentioned that mandatory inclusion of condition of having valid heavy vehicle driving license will be a mandatory condition. Hence the action of the Management requiring the workman to produce valid heavy vehicle driving license cannot be said unjustified in law. Accordingly the reference deserves to be answered against the workman

11. On the basis of the above discussion, following award is passed:-

**A. The action of the management as mentioned in the reference is held to be just and proper.**

**B. The workman is held entitled to no relief.**

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 24-8-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1063.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **डायरेक्टर, सोनाडीह सीमेंट वर्क्स ऑफ़ टिस्को; मैसर्स आर.डी. कंस्ट्रक्शन, रायपुर (छत्तीसगढ़)** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री खिलावन राम एंड ३ अदर्स, रायपुर (छत्तीसगढ़)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या (सीजीआईटी/एलसी/आर/120/99)** प्रकाशित करती है।

[सं. एल-29011/56/98-आई. आर. (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1063.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/120/99)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Director, Sonadih Cement Works of TISCO; M/s R.D. Construction, Raipur (Chhatisgarh)** and **Shri Khilawan Ram & 3 Others, Raipur (Chhatisgarh).**

[F. No. L-29011/56/98-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

### NO. CGIT/LC/R/120/99

**Present:** P.K. Srivastava, H.J.S..( Retd)

Shri Khilawan Ram & 3 Others

Village Mopki, Thana & Tehsil

Bhatapara, PO Dhanili

District Raipur (C.G.) ... Workman

**Versus**

The Director(Works)
Sonadih Cement Works of TISCO
Village Sonadih, Tehsil BAloda Bazar
Raipur(C.G.)
M/s R.D.Construction,
Contraftor, TISCO-Sonadih
AT & PO Bhatapara,
Raipur(C.G.) ... Management

**AWARD**

**(Passed on 15/7/22)**

As per letter dated 1/3/1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/56/98/IR(M). The dispute under reference relates to:

"**Whether the refusal of employment to Shri Khilawan Ram, Narayan Prasad, Shyamlal & Saghela, Ex-railway siding workers (of TISCO) by the Management of Sonadih Cement Workds, TISCO and their Contractor M/s R.D.Constrution w.e.f. 1/6/1997 is justified? If not, to what relief the workmen are entitled.? .**"

NO. CGIT/LC/R/121/99
Shri Hardeo Prasad & 6 Others
C/o Shyamsunder Deva
Village Nipania, Via Bhatapara
Raipur(C.G.) ... Workman

**Versus**

The Director (works),
Sonadih Cement works of TISCO
Village Sonadih, Tehsil:Baloda Bazar
Raipur:493332.
M/s R.D.Construction
Contractor, TISCO-Sonadih
AT & PO Bhatapara,
Raipur (C.G.) ... Management

As per letter dated 1/3/1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/57/98/IR(M). The dispute under reference relates to:

"**Whether the refusal of employment to Shri Hardeo Prasad, Mohan Lal, Raju dhruv, Ved Ram, Fadin, Dev Singh & Vishnu Ram, Ex-Railway siding workers of TISCO by the Management of Sonad in Cement works, TISCO and their Contractor M/s R.D.Construction w.e.f. 1/6/97 is justified? If not, to what relief the workmen are entitled .**"

1. Since the facts and the dispute between the parties in these two cases sought are identical, the evidence is also almost the same, these two references are being answered by one common award.

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

3. According to the applicant/workman, the Management of first party i.e. Sonadih Cement Works appointed them as labourers and engaged them in siding at Nippania(Bhatapara) for the work of maintenance of rail track belonging to Management first party i.e. Sonadih Cement Works. They worked continuously from 1993 to 1999 when there services were orally terminated by M/s R.D.Construction who are the second party Management in reference, without any prior notice and compensation which is in violation of Section 25F & 25G of the Industrial Disputes Act,1947(hereinafter referred to as the word Act). Thus the case of the applicant workman that they have been in continuous service of the management of first party Sonadih Cement Works for 240 days and more in every year, hence had acquired the status of permanent employee, also it is the case of the applicant workman that the workman junior to them were continued, this is also violation of the Act. Thus

according to the workman, their termination is against law. They have sought relief of their reinstatement with all back wages and benefits , setting aside their termination.

4. The Management of first party i.e. Sonadih Cement Works has pleaded that the company is owned by TISCO which has been taken over by Management of Lafarge India having its corporate office in Mumbai. As per the terms of reference, the claimant workman are said to have been working in railway siding of the management of first party which is cement industry which is not a scheduled industry under the Act. The Madhya Pradesh Industrial Relationships Act,1960 which is applicable to Cement Industry with respect to retrenchment of applicant workman, hence as claimed by Management the Central Government is incompetent to make the reference and the reference deserves to be answered as incompetent. It is further the case of the Management first party that in the Cement Industry, the work of loading and unloading of cement packets and their transportation is permitted to be taken from contractors, according to the Cement Wage Board. The first party management have laid 3 kms railway track at Neppania Railway Station main line for the purposes of transportation of cement , raw material etc. The said railway line is used for transportation of raw material, clinker from Sonadih Cement plant to other plant situated at JoJobera Jamshedpur, Bihar. The maintenance of railway track is an unusual work which is not regularly done rather done at intermittent intervals. This work is given to the contractor under specific contracts. There have been various contractors allotted the work of maintenance of railway track, loading and unloading, as well as transportation of raw material for railway track namely M/s Nalanda Enterprises M/s Amit Technical Services, M/s Saibaba Associates and M.s R.D.Construction. Lastly the contract was awarded to M/S/ R.D.Construction and work orders for maintenance and transportation as well as loading and unloading were issued to M/s R.D.Construction(Management Second Party). The applicant/workman were engaged by the contractors for the track maintenance work. In course of time , since the quantum of job in the track maintenance was reduced resulting in reduction of contractual value of the contract. It was not possible for the contractor to keep all the applicant workman engaged continuously for this work. Hence they were offered alternate appointment in rake loading and levelling work which they refused and left the job. Hence according to the Management First Party, their dis-engagement is not retrenchment in the Act. Accordingly, the Management has prayed that the reference be answered against the workman.

5. During the course of time, the management First Party were substituted by M/s Nowokovista Corporation because the earlier Management of Sonadih Cement Works transferred its liabilities and assets to NowovkoVista Corporation. Notices were sent to the new Management of M/s NowovokoVista Corporation which were served by Humdust service. Similarly the Management of second party i.e. M/s R.D.Construction was also served by Humdust service but they never appeared and the reference proceeded ex-parte against the applicant No.1 Khilawan Ram who died during the proceedings and his legal representative have been substituted.

6. Workman Mantram, Devsingh, Shyamlal, Khilawan have examined themselves as workman witness and they have been cross-examined by Management learned counsel in Rerence Case No.120/99. The workman Hardevprasad, Mohanlal, Fadeen, Bedram, vishnuram, Devsingh and Rajuram Dhruv have examined themselves as workman witness in Reference Case No.121/99. The management has examined Ravi Chandra Shehkhar, Assistant General Manager as his witness. He has been cross-examined from the workman side. Another witness of the Management Shri R.D.Prasad who is proprietor of M/s R.D.Contructions) Management second party) had filed his affidavit as his Examination in Chief. He has been cross-examined on commission in both the cases.

7. I have heard arguments of Shri Manoj Singh counsel for workman and Shri A.K.Shashi, learned counsel for the management of first party and have perused the record.

8. On perusal of the record in the light of rival arguments, the following issues come up for determination in the case in hand:-

**(1) Whether the reference is not maintainable?**

**(2) Whether the applicant workman were engaged by the Management first party.**

**(3)Whether the services of applicant workman was terminated by Management first party against law?**

**(4) Whether the workman are entitled to any relief?**

**9. ISSUE NO.1:-**

According to the learned counsel for the Management, the cement industry is a not scheduled industry in the Industrial Disputes Act,1947 and the M.P.Industrial Relationship Act,1960 which is applicable to Cement Industry . He has particularly referred to Section 110 of MPIR Act,1960 in this respect, which is as follows:-

**110. Saving of certain provisions of the Industrial Disputes Act -Except Chapters V-A, V-B and V-C and the other provisions with respect of layoff, retrenchment compensation special provisions relating to lay-off. retrenchment and closure in certain establishment and unfair Labour practices] nothing in the Industrial Disputes Act, 1947(No. XVI of 1947) shall apply to any industry to which this Act is applied; Provided that— (a) any settlement arrived at or award made under the provision of the Industrial Disputes Act, 1947 (No. XVI of 1947) here in after it this section referred to as the Central Act) in respect of any industry to which before the date of application of this Act, the Central Act was applicable, shall be deemed to have been arrived at or made under the provisions of this Act, unless and until prescribed by any settlement or award arrived at or made under this Act; (b) any proceedings pending on the date of application of this Act to an industry to which before such date the Central Act was. applicable, shall be disposed of in accordance with the provisions of the Central Act.**

10. Learned counsel has submitted that since the reference has been made to this Tribunal by Central Government , it is not maintainable because the Central Government is not the appropriate Authority for making reference with respect to disputes regarding Cement Industry. According to him, the dispute should have been referred to by the State Government.

11. Learned Counsel for workman has opposed this submission and as referred to Section2A of Indusrtrial Disputes Act,1947 along with Schedule-1 Industries(Development and Regulations Act 1951 Item No.35) in the Act of 1951 as referred to above Cement Industry finds place at Serial No.35 which has no control of Central Government. The relevant lines of Section 2A(1) in this respect is being referred to as follows-

**(a) "appropriate Government" means—**

**(i) in relation to any industrial dispute concerning 4*** any industry carried on by or under the authority of the Central Government, 5*** or by a railway company 6[or concerning any such controlled industry as may be specified in this behalf by the Central Government].....**

12. Learned Counsel has further referred to a judgment of Hon'ble M.P.High Court in the case of Ultra Tech Cement Limited Vs. Siya Sharan Pandey in W.P.No.1442/2020 in support of his argument on this point. IN the light of these provisions and judgment, the arguments from the side of the Management that Central Government is not the appropriate Government for making reference with respect to Industrial dispute regarding Cement Industry does not hold water and fails. It is held that the reference is competent enough to be referred by Central Government **and Issue No.1 is answered accordingly.**

**13. ISSUE NO.2 AND 3.-**

Since Issue No.2 and Issue No.3 are inter related, they are being taken together. According to the pleadings from workman side in both the cases, they were engaged by the Management (first party)Sonadih Cement Works for the work of maintenance of railway tracks within the period 1993 to 1999 whereas according to the Management the work of loading and unloading as well as maintenance of railway track was awarded to different contractors at different times as mentioned earlier. The last contractor was M/s R.D.Construction who was given contract w.e.f. 1-6-1997 . Before M/s R.D.Construction the work was given to M/s Saibaba Associates which ended by 31-5-1997. The workman in both the cases have stated in their affidavit filed as their examination in Chief that they have been continuously working in the railway siding since 1993 to 1-6-1997. This work was got done by the various contractors M/s R.C.C. Contractors was allotted work from 3-10-1993 to 22-3-1994. Thereafter contractor M/s Nalanda Enterprises was allotted work from23-3-1994 to 24-1-1996. Thereafter another contractor M/s Amit Technical services was allotted contract from 25-1-1996 to 31-5-1996. Thereafter other contractor M/s Saibaba Associates was awarded contract from 1-6-1996 to 31-5-1997 and lastly contractor M/s R.D.Construction was allotted contract from 1-6-1997 and thereafter. It is in the affidavits of the workman witnesses in both the cases that they were engaged from 1-6-1997. The Management witnesses also states the same. According to the Management witness after getting the contract M/s R.D.Construction informed the Management of Cement Company that the job of track maintenance has been reduced, hence contractual value was reduced. He expressed his inability to provide work of track maintenance to the workman and offered alternate opportunity including levelling work but the workman refused to accept the offer. After refusing the offer, the workman started interrupting the work of contractor but he could not continue them in track maintenance and the claimants were not ready to accept the alternate work and left the job on their own. This is in the affidavit of the management witness, as his Examination in Chief in both the cases. The last Contractor M/s R.D.Construction is a party to the reference but it has not contested the reference

rather the Management has examined its proprietor Shri R.D.Prasad as witness in both the cases. He has also stated the same as stated by the Management witness. It is in the statement of the workman that they were engaged by the Management of Cement Company i.e. first party but in cross-examination they have almost admitted that they were working for different contractors in different times which comes out from perusal of their cross-examination. Hence in the light of these facts, the claim of the workman that they were engaged by the management (first party) Sonadih Cement works is held not proved. It is held proved that they were engaged by different contractors at different time as mentioned above.

14. It is also in evidence that the workman were discontinued from the first day the contractor M/s R.D.Construction started work under the contract. This M/s R.D.Construction is a party to the reference. Except the statement of the workers on oath that they were in continuous engagement for 240 days every year, there is no documentary evidence to corroborate this fact. Moreover, the contractors under whom the workman worked for a period of more than 240 days in continuous engagement are not a party to the reference. Any claim of these workman would arise against their employers who were the contractors engaged before the last contractor M/s R.D.Construction. Though the workman witness have denied that they were offered alternate appointment by the last contractor as the job of track maintenance had reduced. Even if this statement of workman witness is believed, the did not have any right to continue with the new employer M/s R.D.Construction particularly when this fact is proved that the work for which they were engaged for earlier contracts had reduced and new contractor did have enough work to be offered to them. IN the light of these proved facts, the disengagement of workman cannot be held against the Act. **Issue No.2 and No.3 is answered accordingly**.

**15. ISSUE NO.4.**

In the light of the finding recorded above, the workman are held not entitled to any relief. **Issue No.4 is answered accordingly**.

16. On the basis of the above discussion, following award is passed:-

**A. The action of the management in refusing employment to Shri Khilawan Ram, Narayan Prasad, Shyamlal & Saghela, Ex-railway siding workers (of TISCO) by the Management of Sonadih Cement Works, TISCO and their Contractor M/s R.D.Construction w.e.f. 1/6/1997 is held to be justified.**

**B. The workmen are held entitled to no relief.**

**C. Parties to bear their own cost.**

17. Since common award is passed, copy of this award be also placed in case file of R-121-1999.

18. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 15-7-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1064.**—औद्योगिक विवाद अधिनियम, 1947 *(*1947 का 14*)* की धारा 17 के अनुसरण में केन्द्रीय सरकार **डिप्टी जनरल मैनेजर, लाफार्ज इंडिया प्रा. लिमिटेड; मैसर्स टी.एम. इंजीनियरिंग, चंपा (छत्तीसगढ़)** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री जितेंद्र सिंह राठौर पुत्र स्वर्गीय राजपाल सिंह राठौर, चंपा (छत्तीसगढ़)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या (सीजीआईटी/एलसी/आर/26/2016)** प्रकाशित करती है।

[सं.एल -29012/3/2016-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1064**.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. (CGIT/LC/R/26/2016)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Dy. General Manager, Lafarge India Pvt. Ltd.; M/s T.M. Engineering, Champa (Chhatisgarh)** and **Shri Jitendra Singh Rathore, S/o Late Rajpal Singh Rathore, Champa (Chhatisgarh).**

[No. L-29012/3/2016-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**No. CGIT/LC/R/26/2016**

**Present: P.K. Srivastava H.J.S..( Retd)**

Shri Jitendra Singh RAthore,
S/o Late Rajpal Singh RAthore,
Supervisor Lafarge India Pvt. Ltd.
Arasmeta Cement Plant,
Gopal Nagar, PS-Mulmula,
Tehsil Akaltara,
District Janjgir, Champa (Chhattisgarh) ...Workman

**Versus**

The Dy.General manager (P&A)
Lafarge India Pvt. Ltd.
Arasmeta Cement Plant,
Gopal Nagar,
District Janjgir-Champa (Chhattisgarh)
2.M/s T.M.Engineering,
Lafarge India Pvt. Ltd.
Arasmeta Cement Plant,
Gopal Nagar, PS-Mulmula,
Tehsil Akaltara,
District Janjgir,Champa (Chhattisgarh)

....Management

**AWARD**
**(Passed on 30-8-2022)**

As per letter dated 15-2-2016by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29012/3/2016-IR(M). The dispute under reference relates to:

"***Whether the action on the part of M/s T.M.Engineering working with the Principal Employer Aarsameta Cement Plant, a Lafarge unit, Gopal Naar, Districe Janjgit-Champa(Chhattisgarh) in not engaging Shri Jitender Singh Rathore, Supervisor earlier working with the contractor M/s Desai & Company is appropriate and justified and the unpaid wages not paid by the Management of Lafarge Cement Plant in the event of change over of engagement of the new contractor is appropriate and justified. If not, what relief the concerned supervisor is entitled to? .***"

***(ii)Whether the claim made by the disputant supervisor towards compensation of Rs.10m00,000(T4en Lakh)if he is ot provident further job with the newly engaged contractor in the same Cement Plant is proper and justified.?***

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The workman never appeared inspite of service of notice on him and nor has filed any written statement of claim.

3. The Management has also not filed any statement of defence.

4. Inpsite of giving opportunities to both the parties, none of the parties have filed the written arguments.

5. The initial burden to prove their claim lies on the workman. He has not filed any statement of claim nor has he filed any documents or evidence in his support. The workman has miserably failed to prove his case. Hence this tribunal is constrained to decide the reference against the workmen.

6. Accordingly the award in favour of the Management is passed. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 30-8-22

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1065.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **सीनियर डिविशनल मैनेजर, एलआईसी ऑफ़ इंडिया , ग्वालियर (एम.पी.)** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री राम नरेश पुत्र श्री साधुराम, भिंड (एम.पी.)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या (सीजीआईटी/एलसी/आर/53/2015)** प्रकाशित करती है।

[सं. एल -17012/3/2015-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1065.**— in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/53/2015)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Senior Divisional Manager, LIC of India, Gwalior (M.P.)** and **Shri Ram Naresh, S/o Sadhuram, Bhind (M.P.).**

[No. L-17012/3/2015-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/53/2015**

**Present: P.K.Srivastava H.J.S..( Retd)**

Shri Ram Naresh

S/o Sadhuram

Village Uddankheda,

Tehsil Ater,District Bhind(MP) ... Workman

**Versus**

The Sr.Divisional Manager,

LIC of India,

Divisional Office,

District Gwalior

Gwalior(M.P.) ..Management

**AWARD**

**(Passed on 23-8-2022.)**

As per letter dated 5/5/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/3/2015-IR(M). The dispute under reference relates to:

> "***Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Gwalior in terminating the services of Shri Ram Naresh S/o Sadhuram w.e.f. 1.9.2007 is legal and justified? If not, to what relief the applicant is entitled to?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was registered with the employment exchange with Registration No.5149/91 on 23-9-1991. He was called for interview by the Bhind Branch office of the management for the post of Peon on 20-10-1993. He appeared in the interview and after that he was posted as regular peon in the Branch on 18-2-1994. He worked continuously till 1-9-2007 as peon in the Branch when his services were terminated by Management under an oral order. It is further his case that he worked continuously for more than 240 days in every year till his termination which was without any notice or compensation, hence his termination is bad in law being violative of Section 25 of the Industrial Disputes Act,1947(hereinafter referred to as the word 'Act'). On Prakash Sharma was also appointed as a peon with the applicant workman in the same manner who was regularized and was promoted thereafter, hence his termination is also in violation of Section 25G & 25H of the Act. Accordingly, the workman has prayed that setting aside his termination, he be reinstated in services with all back wages and benefits.

3. Case of the management in brief is that the applicant workman was never an employee of Management hence, there is no question of his termination. Management has further pleaded that the workman was never appointed as a regular peon on 18-1-1994 as claimed by him in fact, there was no vacancy notification for recruitment in the said Division between 1993 to 10-12-1995 and no regular recruitment was made. According to the Management, regular appointment are done according to the provisions of Life Insurance Corporation Staff Regulation 1960 and Life Insurance Corporation Recruitment Group III & IV Regulations 1993. There was a recruitment notification released by the Management on 11-12-1995, written examination was conducted on 12-2-1996. Result released on 22-5-1996. Prakash Chandra Sharma referred to by the applicant workman was selected in the examination along with other candidates and was given regular appointment. It is further the case of the management that the applicant workman also appeared in the examination having allotted Roll No.3052 but he could not succeed. Management has further stated that since 18-2-1994 to 1-9-2007 the applicant workman never worked continuously for more than 240 days or more in any calendar year, hence no question of his illegal termination. Accordingly the Management has prayed that the reference be answered against the workman.

4. The workman has filed rejoinder wherein he has mainly reiterated his claim.

5. In evidence, the workman has filed and proved photocopy certificate issued by Pradhan , Photocopy mark sheet class-XIth, photocopy of caste certificate , photocopy of domicile certificate and other documents which are marked as Exhibit w1(1) to Exhibit W1(11). The workman has further filed and proved photocopy documents Exhibit W-2 to W-12, to be referred to as and when required. The workman has examined himself as witness on oath and has been cross-examined by the Management.

6. Management has examined its witness Ashok Kumar, Manager law and Industrial relations and has proved attendance registers for November and December 2006, Rebruary-2007 to August-2007 relating to permanent employees, Exhibit M1 to M9.

7. I have heard argument of Mr. R.K.Soni, learned counsel for the workman and Mr. Aditya Singh, learned counsel for the Management and have gone through the record. From perusal of record in the light of rival arguments, following issues come up for determination:-

**(1)Whether the workman has successfully proved his continuous engagement for 240 days in every year or more in the year preceding the date of his dis-engagement.?**

**(2)Whether the dis-engagement of workman is in violation of any problem of Industrial DisputesAct,1947?**

**(3) Relief if any the workman is entitled to?**

8. **ISSUE NO.1 AND ISSUE NO.2:-**

Since Issue No.1 & No.2 are inter related, they are being taken together.

Before proceeding Section 25B, 25F, 25G and 25H of the Industrial Disputes Act,1947 are being reproduced as follows:-

**Section 25 B:-**

**Definition of continuous service.-**

**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.**

**25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]**

**25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.**

**25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.**

9. In the case of **Municipal Corporation Faridabad Vs. Sri Niwas** 2004(6) SCC 456 referred to from the side of the workman, Hon. The Apex Court has held that the burden of proof was on workman to show that he had worked for 240 days in the twelve months preceding the alleged retrenchment.

10. Exhibit W1(7) filed and proved by the workman is the interview letter issued by the Management dated 20-10-1993. Exhibit W-9 is the appointment letter issued by the Management subject to temporary appointment of the workman on the post of peon. According to this offer of appointment, the period of appointment will be 30 days which can be extended up to 85 days. Exhibit W1(8) is the certificate issued by the Branch manager certifying that the applicant workman worked for 90 days within the period of 21-2-1994 to 21-5-1994 and 7-9-1994. Exhibit W-1(10) proved by the management is the list of peons selected on the basis of interview in which the name of the applicant workman and Prakash Chand Sharma and another workman finds mention.

Exhibit W-3a to W-13 are vouchers of payments of wages given to the workman by Management on different dates between 12-4-1997 to July-16-1999 . this documents coupled with the statement of claim of workman on oath corroborates his case that he was first engaged as a temporary peon in the Branch through his services were not regularized.

11. On the other hand the management witness has stated that the workman was never appointed as peon on regular basis in the Branch because there was no notification for vacancy and recruitment released by the Management between the year 1993 to 10-1-1995. The written test for regular appointment of peons was held in the light of vacancy notification dated 11-12-1995 on 12-5-1996 result declared on 22-5-1996. Shri Prakash Chandra Sharma and the applicant workman both appeared in the test. Shri Prakash Chandra Sharma was selected but the applicant workman could not be selected. The Management witness has further denied in his statement that the workman had completed 240 days continuously in any year till 1994 to 2007. Under the orders of this Tribunal the Management has produced attendance register for the year November and December 2006 and February-2007 to August-2007 where the name of the applicant workman does not find mention. This Attendance register is with regards to the regular and permanent employees.

12. The BCR Register for the year 2007-2008 and 2006-2007 filed by the management under the orders of this Tribunal contains head regarding temporary waterman. This register also does not have mention or entry regarding the workman or any waterman. As mentioned earlier, the documents filed and proved by the workman relate regarding payments made to him in different years from 1997 to 1999. These documents do not support the claim of the applicant workman that he was engaged till 2007. Now the facts which are to be proved is that the case of the workman that he was appointed as a temporary peon on the basis of interview as sponsored by employment exchange in the year 1994 is proved but his claim that he continued as such till 2007 is not proved because except his self-serving statement on oath, even his documents do not support his claim and Management documents particularly Exhibit M1 to M9 which are attendance register for the period mentioned earlier and BCR registers for two years as mentioned earlier militates against the case of the workman. Hence on the basis of above discussion, it is held that the workman could not successfully prove his continuous engagement for 240 days in the year preceding the date of his termination. **Issue No.1 is answered accordingly**.

13. As regards Issue No.2, the case of the workman has to be seen on two points. First is in the light of Section 25F of the Act. Since the workman could not successfully prove his continuous engagement for 240 days in the year preceding the date of his termination, his dis-engagement cannot be held in violation of Section 25F of the Industrial Disputes Act,1947.

14. The other angle from which the case of the workman requires to be seen is the recruitment rules and procedures regarding recruitment of sub-clause-III and Clause-IV in Life Insurance Corporation of India mentioned in Life Corporation of India Employment of Temporary Staff Instruction 1993. According to the instruction 5-2(b) which is reproduced as follows:-

> **5(2)(b):- IN the event such an arrangement is not possible after recording the reasons for the departure from the procedure mentioned in the immediately preceding paragraph the Sr./Divisional Management may authorize in writing the Sr./Branch Manager to employ temporary staff from among persons who satisfy all the eligibility conditions for recruitment of Class IV staff under the Recruitment Instructions through the local Employment Exchange.**

15. In Temporary class-IV post appointment may be made from among the persons who satisfy all the eligibility conditions for recruitment of Class-IV Staff under recruitment instructions, through local employment exchange.

16. Instruction No.7 and Instruction No.8 relevant for this purpose provide that such temporary Class-IV employees shall be empaneled and shall be eligible to take part in recruitment process for regular appointment subject to other eligibility conditions.

17. In the case of **Ranbir Singh Vs.S.K.Rai, Chairman Life Insurance Corporation** in Misc. Appeal No.1160/2019 in Contempt Civil No.1921/2017 with regards to judgment of Hon. The Apex Court in Civil Appeal No.6950/2009, Hon. The Apex Court has directed that the Committee appointed by the Court will consider all the claims of the workers who are engaged between 20-5-1985 and 4-3-1991. Since it is not the claim of the applicant workman that he was engaged in any capacity during this period, he is not entitled to any benefit in the light of this judgement of Hon. The Apex Court.

18. As has been detailed earlier, the Management has taken a case that the workman was given opportunity to appear in the recruitment procedure in the year 1996 conducted for appointment against regular vacancy in which he could not succeed and Shri Prakash Chandra Sharma succeeded the workman has not controverted this fact and hence it is established that as per rules and Departmental instructions the workman was given

opportunity to participate in the recruitment process against regular vacancy in which he failed. This fact also militates against any relief prayed by the workman.

19. ON the basis of above discussion, **Issue No.2 also deserves to be answered against the workman.**

20. **ISSUE NO.3**

On the basis of finding recorded above, the workman is held entitled to no relief. **Issue No.3 is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

**A. The action of the management of Life Insurance Corporation of India, Divisional Office, Gwalior in terminating the services of Shri Ram Naresh S/o Sadhuram w.e.f. 1.9.2007 is held to be legal and justified.**

**B. The workman is held entitled to no relief.**

**Parties to bear their own costs.**

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 23-8-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1066.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **जनरल मैनेजर, मेसर्स सीमेंट कॉर्पोरेशन ऑफ़ इंडिया लिमिटेड, चंपा (छत्तीसगढ़)** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री जीत सिंह क्षत्रिय, चंपा (छत्तीसगढ़)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या सीजीआईटी/एलसी/आर/32/2017)** प्रकाशित करती है।

[सं. एल-29012/28/2016-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1066.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/32/2017)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The General Manager, M/s Cement Corporation of India Ltd., Champa (Chhatisgarh)** and **Shri Jeet Singh Kshetriya, Champa (Chhatisgarh).**

[F. No. L-29012/28/2016-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/32/2017**

Present: P.K.Srivastava

H.J.S..( Retd)

Shri Jeet Singh Kshetriya,
Purani Basti,
AT & PO-Akaltara,
District Janjgir-Champa(C.G.)

... Workman

**Versus**

The General Manager
M/s Cement Corporation of India Ltd.
AT and PO-Akaltara
District Janjgir
Champa (C.G.)

... Management

**AWARD**

**(Passed on 19-7-2022.)**

As per letter dated 22-3-2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification F.No.L-29012/28/2016-IR(M). The dispute under reference relates to:

> "***Whether the action on the part of the management of CCI Rajban and Akaltara Unit in the decision making process in doing forcible retirement in case of Shri Jeet Singh Kshtriya, the Ex-Assistant accountant when he did not join at Jajban unit without following the principles of natural justice even though more period of service left in his service career is appropriate and justified?If not , what action in case of the above names Ex-workman is justified in decision making process?***" ."

1. After registering the case on the basis of reference, notices were sent to the parties. Inspite of service of notice and various dates given to the workman, he did not appear and never filed the statement of claim.

2. The Management has filed written statement of defence wherein it has been stated that the same dispute has been the subject matter of reference in case No.CGIT/LC\R-50-2003(P.K.Soni, General Secretary, Rashtriya Cement and Khadan Shramik Sangathan Vs. General manager, Cement Corporation of India, Village & Post Akaltara,District Janjgir,Champa(CG) in which Award dated 13-5-2016 was passed and the reference answered against the workman. Hence the finding in the earlier award will operate res judicata between the parties.

3. The case of the management is further that while in service, the workman Jeet Singh was promoted to the post of Accountant at Akaltara Cement Plant vide order of Management dated 24-9-1985. Due to exigency of work and requirement of finance staff at Kolkatta Office, the Management transferred the workman from the Akaltara Plant to Kolkatta Zonal Office. The workman requested for cancellation of his transfer which was refused vide order dated 17/19-7-1989. Thereafter the workman represented for cancellation of his transfer which was refused vide order dated 17/19-7-1989. Thereafter the workman represented for cancellation of his transfer and further requested that he be reverted back if his transfer is not cancelled. The workman subsequently reported to Calcutta Zonal Office on 20-10-1989 but absented from duty without any relief or intimation or permission during the period of his absence from duty. He filed a writ petition No.4366/1989 seeking reversion to back-scale and posting him back to Akaltara office. Hon'ble M.P.High Court, vide its order dated 22-11-1990, directed the management to decide the representation of the petitioner/workman within a week. His representation was allowed by the Management recruiting him back on the post of Assistant Accountant in Wage Board Pay Scale-III. He returned back in Akaltara Office on 29-3-1991. He was again promoted by Management vide order dated 12-3-2001. He raised an industrial dispute which is R/50/2003 decided by Award dated 13-5-2016 i.e. the first dispute. Akaltara Unit has been in non-operation stage since December-1996 and declared sick unit, proceedings pending before BIFR.

4. The Workman opted for voluntary retirement as per the Scheme notified by the Management when the unit became sick. He was paid his retirement benefits details mentioned in the statement of defence. The workman again filed a case before Labour Court Bilaspur for the same cause of action which was dismissed by Labour Court vide order dated 16-1-1998. An appeal against this order was also dismissed by Industrial Court vide its order dated 18-9-1998. A Writ Petition No.5052/99 against the said order was also dismissed by the High Court. The Management has accordingly prayed that the reference be answered against the workman.

5. Due to absence of the workman, the case has proceeded against the workman.

6. The Management has filed affidavit of its witness Uma Shankar Kumar, Manager who has reiterated the case of the Management.

7. I have heard arguments of learned counsel for the Management Shri A.K.Shashi on ex-parte basis and have gone through the record as well.

8. **The reference, itself is the issue for determination, in the case in hand.**

9. The initial burden to prove his claim is on the workman in which he has failed because he has not turned up and nor has filed any evidence in support of his claim. On the other hand , the uncontroverted affidavit of the management witness has proved the case of the management.

10. In the light of the aforesaid circumstances, the reference deserves to be answered against the workman and is answered accordingly.

11. On the basis of the above discussion, following award is passed:-

**A.The action of the management of CCI Rajban and**

**Akaltara Unit in the decision making process in doing forcible retirement in case of Shri Jeet Singh Kshtriya, the Ex-Assistant accountant when he did not join at Jajban unit without following the principles of natural justice even though more period of service left in his service career is held to be just and proper.**

**B.The workman is held entitled to no relief.**

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K.SRIVASTAVA, Presiding Officer

DATE: 19/7/2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1067.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **जोनल मैनेजर, एलआईसी ऑफ़ इंडिया,भोपाल** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री छतर सिंह कनारे, खण्डवा (एम.पी.)** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या सीजीआईटी/एलसी/आर/93/2017)** प्रकाशित करती है।

[सं. एल-17011/8/2017-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1067.**— in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/93/2017)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Zonal Manager, LIC of India, Bhopal** and **The Shri Chhatar Singh Kanare, Khandwa (M.P.).**

[No. L-17011/8/2017-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/93/2017**

Present: P.K.Srivastava, H.J.S..( Retd)
Shri Chhatar Singh Kanare,
Village Chalpi KHurd, Post Somgoan
Via Beed Tehsil Punasa,
District Khandwa(M.P.)

... Workman

**Versus**

The Zonal manager
LIC of India,
60-B Hoshangabad Road,
Bhopal(M.P.)

... Management

**AWARD**

**(Passed on 29-8-2022.)**

As per letter dated 28/6/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17011/8/2017-IR(M). The dispute under reference relates to:

> "***Whether Mr. chhater Singh Kanare, who was employed as Higher Grade Assistant in LIC of AIndia, was removed from service on 30-11-2015, whether such termination is legal, proper and justified or not? 2. If not, whether he is entitled for reinstatement to the same post which was held by him as on 30-11-2015 along with back wages or not? 3. Whether any alternative minor punishment can be imposed on Mr. Chhater Singh Kanare instead of removal from service(as per Sec.11-A of I.D.Act) in view of his admission of guilt. If not to what relief he is entitled .***"

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The workman never appeared inspite of service of notice on him and nor has filed any written statement of claim.
3. The Management has also not filed any statement of defence.
4. Inpsite of giving opportunities to both the parties, none of the parties have filed the written arguments.
5. The initial burden to prove their claim lies on the workman. He has not filed any statement of claim nor has he filed any documents or evidence in his support. The workman has miserably failed to prove his case. Hence this tribunal is constrained to decide the reference against the workmen.
6. Accordingly the award in favour of the Management is passed. The workman is held entitled to no relief.
7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K.SRIVASTAVA, Presiding Office

DATE: 29-8-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1068.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **यूनिट हेड, मेसर्स अल्ट्राटेक सीमेंट लिमिटेड, छत्तीसगढ़** के प्रबंधतंत्र के संबद्ध नियोजकों और **प्रेजिडेंट, खदान एम्पलॉईस यूनियन (इंटक), छत्तीसगढ़** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर** पंचाट **(संदर्भ संख्या (सीजीआईटी/एलसी/आर/91/2017)** प्रकाशित करती है।

[सं. एल-29011/4/2017-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1068.**— in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. (CGIT/LC/R/91/2017)** of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Unit Head, M/s Ultratech Cement Ltd., Chhattisgarh** and **The President, Khadan Employees Union (INTUC), Chhattisgarh.**

[No. L-29011/4/2017-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/91/2017**

Present: P.K.Srivastava
H.J.S..( Retd)

The Preseident,
Khadan Employes Union(INTUC)
54/1234, Shanti Vihar Colony
Dangania, Raipur(Chhattisgarh)

... Workman

**Versus**

The Unit Head,
M/s Ultratech Cement Ltd.
Villatge Grashim
PO-Rawan, District Baloda Bazar
Chhattisgarh.

... Management

**AWARD**

**(Passed on 1-9-2022.)**

As per letter dated 27/6/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/4/2017(IR(M)). The dispute under reference relates to:

> "***Whether the action of the management of M/s UltraTechCement Ltd. Rawan, in denying regular status in respect of 6Operators engagement in packing plant for more than 20 years is legal and justified?If anot, what relief the workmen, represented through Chhattisgarh Cement & Khadan Employees Unio ar entitled to ?M/s Ultratech Cement Ltd.Rawan,District Boloda Bazar is a Cement manufacturing Industry and the Central Government is appropriate Government. The nearest Tribunal is CGIT,Jabalpur .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Inspite of service of notice, the workman Union never appeared and nor did they file the statement of claim
2. The Management has been represented through its counsel Shri Uttam Maheshwari. Inspite of providing many opportunities to both the parties to file written statement, but neither of the parties have filed the same.
3. The workman Union did not file any evidence oral or documentary. The Management also did not file any evidence.
4. **The Reference is the issue for determination, in the case in hand.**
5. The initial burden to prove his claim lies on the workman Union by not filing any statement of claim and any oral/documentary evidence in support of his claim, he workman Union is held to have failed in proving their claim and the reference deserves to be answered against the workman Union.
6. On the basis of the above discussion, following award is passed:-

**A.The claim of the workman Union as mentioned in the reference is held not just and proper.**

**B.The workman is held entitled to no relief.**

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 1-9-2022

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1069.—** औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **इंडियन ऑयल कॉर्पोरेशन लिमिटेड, नई दिल्ली** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री कल्याण दास, नई दिल्ली** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली** पंचाट **(संदर्भ संख्या (147/1997)** प्रकाशित करती है।

[सं. एल -30012/90/1996-IR(C-I)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1069.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (147/1997) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd., New Delhi and Shri Kalyan Das, New Delhi.

[No. L-30012/90/1996-IR(C-I)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

**Present:**

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

**INDUSTRIAL DISPUTE CASE NO. 147/97**

**Date of Passing Award- 08.08.2022**

**Between:**

Shri kalyan Das
Block No.1, P.O Bijwasan, New Delhi. Workman

Versus

Indian Oil Corporation Ltd.,
World Trade Centre,
Baber Road, New Delhi. Management

**Appearances:-**

| | |
|---|---|
| Shri Deepak Kohra (A/R) | For the claimant |
| Shri Naveen Kumar Chaudhary (A/R) | For the Management |

**AWARD**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Indian Oil Corporation Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-30012/90/96 (IR(Coal-I) dated 26th September 1997 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of M/s Indian Oil Corporation Ltd. in terminating the services of Shri Kalyan Das, Driver is legal and justified? If not, to what relief the workman concerned entitled?"

This order deals with the grievance of the claimant with regard to the punishment imposed on him which he describes as unreasonably disproportionate to the charge.

The relevant facts relating to the dispute are that the claimant Kalyan Das (since dead and substituted by legal heirs) was appointed in the management corporation as Driver on 01.04.1965. On 31.01.1996 he was on duty of driving the oil tanker of the management and during the course of duty he was found to have parked the tanker near village Simlaka Delhi and the helper of the tanker was found draining out oil into a jerkin from the said tanker. The claimant was caught red handed and a departmental inquiry was initiated. Charge sheet was served on him. After conclusion of the inquiry the charge was found established. The disciplinary authority found him guilty and on 21.10.1996 a showcause notice was served on him calling him to explain as to why the punishment of dismissal from service shall not be imposed on him. The reply submitted by him was found unsatisfactory and he was visited with the punishment of dismissal from service. Being aggrieved the claimant raised an industrial dispute before the conciliation officer. The conciliation also failed and the matter was referred to this tribunal for adjudication.

After completion of pleading the issues were framed and issue no.2 i.e the issue relating to the fairness of the inquiry was decided to be heard as a preliminary issue. Both parties adduced evidence and argument. This, tribunal by order dated 11.03.2022 came to hold that the inquiry was held by the competent authority following the rules of Natural Justice and there being no evidence to hold the contrary the said issue with regard to the fairness of the domestic inquiry was decided against the claimant and both the parties were called upon to advance argument on the proportionality of the punishment awarded. Accordingly both parties advanced their argument.

During the course of argument the Ld. A/R for the management supported the order of the disciplinary authority imposing punishment of dismissal as proper whereas the claimant describes the same as extremely harsh. It was also argued on behalf of the claimant that no action was taken against the helper who was found drawing oil from the tanker. He was not proceeded with for the inquiry and made a witness against the claimant for some personal grudge of the officials of the management against the claimant.

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar Coalliery Kamgar Union (2005) 3 SCC331,** the Hon'ble SC have held:-

> "it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the ID Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise depends on the facts of each particular case. In a case where the charge is about misappropriation of public property or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination. Moreover the finding in the relevant inquiry is based upon oral evidence only.

In the case of **Regional Manager U.P.S R TC, Etawah & others Vs. Hotilal and another, 2003(3) SCC 605, referred in the later case of UPSRTC VS Nanhelal Kushwaha(2009) 8 SCC, 772,** the Hon'ble Apex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved, but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

This is a case where the claimant was the driver of the Management Company and was often entrusted with the duty of carrying the product of the company to the dealer in the tanker. The duty assigned to him carries the responsibility of delivering the valuable item as per the accurate quantity and quality as well. Any deviation with regard to the quality and quantity is likely to mar the relationship of the company with the customer. Thus, the driver carrying huge quantity of petroleum product in a tanker is expected to carry out the direction and discharge the duty with utmost sincerity and trust. But as stated in the preceding paragraph the allegation against the claimant was of breach of trust and he was caught red handed while draining out the oil from the tanker on the way back which means the appropriate quantity was not delivered at the dealers end. The admitted evidence during inquiry is that for the leakage detected in the tanker the helper was draining the same proves that the tanker was having oil, which was allowed to be drained and the fact that it was leaking has not been proved.

The Ld. A/R for the management while placing reliance in the case of **M/s Firestone Tyres and Rubber Company of India vs. the management and others**, decided by the Hon'ble Supreme Court argued that the discretion vested in the tribunal u/s 11-A should be judiciously exercised. Crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act by placing reliance in the case of **ML Singla vs. Punjab National Bank, AIR 2018 SC 4668,** submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment comensurates the charge. There is no dispute that section 11-A of the Act empowers the industrial tribunal to interfere with the quantum of punishment in appropriate cases. The Hon'ble Apex Court in the case of **Pepsu Road Transport Corporation vs. Rawel Singh AIR 2008(SCW) 2099** have held that section 11A of the Act empowers this tribunal to interfere with the quantum of punishment. But the discretion is to be exercised judiciously in such cases where order of punishment is quiet harsh and disproportionate to the gravity of misconduct of the officials concerned.

In this case the evidence adduced during the preliminary issue clearly reveals that the alleged occurrence was with regard to the trust of the management reposed on an employee and the said employee committed breach of trust during duty. It is not disputed that the claimant was caught red handed. Thus, it is felt proper to observe that in the case of Fire Stone referred supra the Hon'ble Supreme Court have held that after incorporation of provisions of section 11-A in the ID Act the tribunal in order to record a finding with regard to the fairness of the inquiry or the proportionality of the punishment cannot be confined to the materials which were available at the time of domestic inquiry. On the other hand material on record in the proviso to section 11-A of the Id Act must be held to refer to the materials before the tribunal. They take in (1) the evidence taken by the parties during the domestic inquiry (2) the evidence taken before the tribunal. This empowers the tribunal to consider the evidence recorded before this tribunal for adjudicating the proportionality of the punishment imposed.

On behalf of the claimant it was pointed out that the senior officers of the respondent when visited the site found an outsider taking the oil from the tanker. But the liability was fixed on the claimant. This argument does not sound convincing since the claimant was in charge of the tanker being entrusted with the said movable property and under every circumstance till the tanker is brought back to the depot he is the custodian of the same. It is for him to explain as to how the oil after delivery to the dealer remained in the tanker and how the outsider was draining the oil from the tanker in possession of the claimant. This conduct of the claimant clearly shows the breach of trust by him leading to loss of confidence by the employer on him as the employee. The law is well settled that for loss of confidence the disciplinary authority can pass the order imposing punishment of dismissal from service as has been done in the case of the claimant. Hence it is felt proper not to interfere and modify the punishment imposed by the disciplinary authority in exercise of the power conferred u/s 11-A of the ID Act. Hence, ordered.

**ORDER**

The reference be and the same is answered against the claimant. it is held that the finding rendered in the departmental proceeding and the punishment imposed is proportionate to the charge leveled against the claimant. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

08th August, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1070.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स द ओरिएण्टल इन्सुरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और जनरल सेक्रेटरी, उत्तर प्रदेश जनरल इन्सुरेंस एम्प्लाइज यूनियन, केयर ऑफ़ नेशनल इन्सुरेंस कंपनी लिमिटेड, कानपुर बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या (25/2017) प्रकाशित करती है।

[No. एल -17011/11/2016-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28 October, 2022

**S.O. 1070.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (25/2017) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s The Oriental Insurance Co. Ltd., and The General Secretary, Uttar Pradesh Insurance Employees Union, C/o National Insurance Co. Ltd., Kanpur.

[No. L-17011/11/2016-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR**

**Present :** SOMA SHEKHAR JENA HJS (Retd.)

**I.D. No. 25 of 2017**

L-17011/11/2016-IR(M) dated 25.04.2017

**BETWEEN**

The General Secretary,
Uttar Pradesh General Insurance Employees Union,
C/o National Insurance Co. Ltd, Divisional Office
The Mall, Kanpur(U.P)-208001

**AND**

1. The Chairman & Managing Director,
M/s The Oriental Insurance Co. Ltd,
25/27, Asraf Ali Road, New Delhi-110002.

2. The Regional Manager,
M/s The Oriental Insurance Co. Ltd,
Regional Office, Jeewan Bhawan,
43-Hazratganj, Lucknow-226001.

3. The Branch Manager,
M/s The Oriantal Insurance Co. Ltd.
Fatehpur (U.P)

**AWARD**

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-17011/11/2016-IR(M) dated 25.04.2017

**SCHEDULE**

***"Whether the provisions of Industrial Disputes Act, 1947 are applicable on the establishment of The Oriental Insurance Co. Ltd; Kanpur? If so, whether any unfair labour practice has been done by the management and whether the action of the management in awarding punishment of reduction of pay of workman during the pendency of conciliation proceedings, not providing leave record from 01.01.2003 onwards, TDS details and non-reimbursement of medical claim in respect of Shri Mahesh Chandra Dubey, Clerk is just, fair and legal? If not, what relief the workmen are entitled to"?***

On receipt of notification, notices were issued to both the parties on 11th May 2017 fixing 07.07.2017 for filing of claim statement. On the very first date union moved an application under section 36 of the Industrial Disputes Act, 1947 copy of which was received by management on 08.09.2017. Meanwhile on 27.12.2017 Shri Ajay Shankar was directed to file the documents/credentials to corroborate his authority to represent on behalf of the claimant workman. It is worthwhile to mention that the union sought several adjournments for filing claim Statement. On 07.09.2018 Authorized Representative of management filed an objection raising question about the authority of the union and prayed before the Tribunal to summon the documents to verify the authenticity of the claim of the union. The union on behalf of claimant workman failed to appear before the Tribunal despite getting ample opportunities.Various dates such as on 08.03.2018, 8.05.2018, 13.07.2018, 7.09.2018,15.11.2018, 17.01.2019, 13.03.2019, 6.06.2019, 21.08.2019, 27.11.2019, 5.02.2020, 29.04.2020, 13.07.2020, 5.08.2020, 3.11.2020, 18.2.2021, 05.04.2021, 16.06.2021, 23.08.2021, 22.10.21, 08.12.2021, 30.3.22, 29.04.2022. were fixed but claimant workman or union failed to appear. On these dates union on behalf of claimant workman not only failed to appear before the Tribunal and file claim statement but also failed to file summoned documents in order to bolster the authority of the union for representing the workman.

From the aforesaid circumstances it is presumable that the claimant union is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of `NIL` award.

Parties are left to bear their respective costs.

Date: 26.07.2022

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1071.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राजेन्द्र, थ्रू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या (163/2019) प्रकाशित करती है।

[सं. जेड -16025/04/2022-IR(M)]
आशीष कुमार यादव, अवर सचिव

New Delhi, the 28th October, 2022

**S.O. 1071.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (163/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Rajender,Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]
ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

**Present:** Smt. Pranita Mohanty,

Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

**INDUSTRIAL DISPUTE CASE NO. 163/2019**

**Date of Passing Award- 21.08.2022**

**Between:**

Shri Rajender,
S/o Shri Rai Singh,
R/o- House No.70, Sector-8, Bapdola, Dwarka, New Delhi-110061.
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086 .... Workman

**Versus**

1. Delhi International Airport Pvt. Ltd.,
   Terminal-3, IGI Airport, New Delhi-110037.

2. Delhi International Airport Pvt. Ltd.,
   D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.

3. Sodexo Technicals Services India Pvt. Ltd.,
   B-21, IInd & IIIrd-Floor, Sector-58, Noida UP.

4. OCS Group UK Facility Management Services, ... Managements
   Omega Chamber-1/3, Rawandsa Road, Gurgoan

Appearances:

| | |
|---|---|
| Claimant in person | For the claimant |
| (A/R) | |
| Shri Digvijay Rai, Manish Sehrawat | For the Management No.1 and 2 |
| (A/R) | |
| Shri B K Singh | For the management No.3. |

**AWARD**

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 35,088/- vide cheque no. 035039/- dated 12.03.2020 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

Date: 21.08.2022 PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1072.**— औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बजाज एलियांज लाइफ इन्सुरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती बीना गौर, कानपुर बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या (04/2021) प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]
आशीष कुमार यादव, अवर सचिव

New Delhi, the 28 October, 2022

**S.O. 1072.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (04/2021) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bajaj Allianz Life Insurance Company Ltd., and Smt.Beena Gaur, Kanpur.

[No. Z-16025/04/2022-IR(M)]
ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR**

**Present :** SOMA SHEKHAR JENA
HJS (Retd.)

**I.D. No. 04 of 2021**

**K-10/2-5/2020-IR dated 14.01.2021**

Between

Smt. Beena Gaur, F/14,Shanti Nagar, Cantt. Kanpur-208004 (U.P.)

**AND**

1 The Area Manager Bajaj Allianz Life Insurance Company Ltd., 80 Feet Road,Kanpur-208012

2. The Manager, Bajaj Allianz Life Insurance Company Ltd., GE Plaza, Airport Road, Yerwada,Pune-411006

**AWARD**

This Award arises in the matter of Termination of work lady Smt. Beena Gaur as communicated by Notification No.K-10/2-5/2020 -IR(dated 14.01.2021) .The Industrial Dispute for Adjudication is received from the Deputy Chief Labour Commissioner (Central) Kanpur stated in the schedule below:

"**Whether Smt. Beena Gaur, Business Sales Manager engaged by the management of Bajaj Allianz Life Insurance Company limited can be treated as workman under the provisions of I.D. Act,1947? If so, whether the action of management in terminating her services w.e.f. 06.12.2019 is justified and legal? If not, to what relief the workman is entitled to?**

The averments made by the work lady in the claim statement are concisely stated as follows:—

On 1/6/17 she was appointed as senior business manager in Kanpur Nagar branch of the Bajaj Allianz Life Insurance company . Designations in insurance company are very attractive . while in reality they go from door to door to promote the company's insurance products and company's agency etc. She was working on the post of a workman , She could not appoint any employee below her , nor she had authority to remove anyone, nor could she allow leave of absence to anyone etc. Her appointment letter shows the contours of her job. Claimant worklady claims that she was a talented and loyal employee of the company . She worked on the field and sold Bajaj Allianz insurance products to the people . To take the agency , an applicant should get the license of IRDA after passing the written examination of IRDA and the company provides the agent code, only after that the agent sells the company's insurance product and the company pays commission on it. The insurance consultant is a complete freelancer. She enrobed the people of the society with company's agency so that the profit and prestige of the company could increase. with fulfilling the target of the entire region the details of which are in email dated 26/11/18 etc. The claimant worklady had successfully achieved confirmation in the company. She had achieved high performance in the company because of her efficiency, as a proof of which letter of commendation was issued .Her best performance would have adorned her with promotion and salary increase had the company not terminated her job .

It is stated by the claimant that to create immoral pressure, some people were constantly harassing her and were conspiring to get her fired from job . Seeing the prospects of her possible promotion, salary increase and prestige etc. due to her continuous high performance, some people conspired against her with malicious designs with the management of the company and got her sacked from the company after being implicated in a police case for the purpose of tarnishing her reputation with fake documents , making a concocted investigation, calling the living woman Sunita Tiwari person as a deceased and insuring the deceased woman, etc., sent the charge sheet . Under the scheme , after cancelling the application of Sunita Tiwari's insurance policy issued in June 2018 by Himanshu Sharma , an insurance consultant working in her freelancer team , immediately the premium of Rs 50000 was credited to Sunita Tiwari's current savings account, after six months. After accusing Himanshu Sharma of insuring the deceased woman, etc., as a proxy , after the investigation dated 22/11/18, the company management gave a show cause notice.

Himanshu Sharma , refuted all the allegations levelled against him, sent to the company on 09 /11/18 his explanation and sent sufficient proof of the said woman to be alive, to the company authority. The company did

not present any proof of her being dead. Himanshu Sharma also complained about the harassment and exploitation being done by the company with sufficient evidence.

The company has taken action to put unethical pressure on the claimant worklady under the conspiracy , bypassing the sufficient evidence of Sunita Tiwari's existence such as ITR , bank account , insurance policy etc. given by the insurance consultant Himanshu Sharma . So by issuing a show cause notice ,the management pressurized to find the said woman which was against the conditions of service of the workwoman. She was threatened to be sent to jail with ruin to her life .The letter dated 23/07/20 and the email sent by the company contained full details of this criminal conspiracy .

It is that under the conspiracy done by well - planned and organized manner, in the investigation done by the company , after confirming the allegations of insuring the deceased woman , cheating , without verification show Cause Notice was issued on 24/10/18.

The worklady had given the reply to show cause notice on Monday morning on 26/11/18 and on 27/11/18 ,on 30/11/18 to Mr. Binal Sinha and to all the officers of the company . No Irregularity was observed while making the policy . Sufficient evidence had also been vouched suggestive of the regularity of the process in the matter of issuance of policy.

It is that on 28/11/18 at 2:42 a call was received from the head office and the claimant workwoman was pressurized and intimidated On the one hand, the company tells Sunita Tiwari as a voter on the other hand, pressurized her to find Sunita Tiwari .

She was threatened with ruin to her life by linking her name with the notorious gang that insures the dead and sacking the claimant worklady from the company. The Assistant Labour Commissioner, taking cognizance of illegal dismissal issued a notice to the company and sought its reply . The Worklady refuted the reply sent by the company on 22/06/20, 15/09/20 on the basis of sufficient information and material. The company tried to put the woman employee doing high performance under unethical pressure by harassing her and torturing her with false allegations and sacking her from the job of the company under the conspiracy.

It is averred by the claimant worklady that she was terminated by the company which has been done with the design of creating unethical pressure, oppression in violation of labour laws .

Though notices were issued to the O.P. Management no written statement was filed by the O.P. side. None appeared on behalf of O.P. on the date of posting such as on 09.11.2021, 13.1.2022, 05.04.22, 05.5.22, under such scenario the Industrial Dispute was heard ex-parte against O.P. management.

Following points are to be addressed for disposal of the Industrial Dispute raised by the Claimant Smt. Beena Gaur:—

Whether Beena Gaur working as Sales Manager can be included in the category of workman within Section 2(s) of the Industrial Disputes Act 1947(herein after referred in short as the Act).Whether the termination of Beena Gaur by employer (Bajaj Life Insurance Company ) is legally justified.To what relief the claimant is entitled. The averment of claimant that she joined as sales manager of Bajaj Alliance Life Insurance company on 01.06.2017 has not been controverted. The unchallenged documents produced by the claimant side proved that she was appointed as Sales Manager of O.P. management and she worked till 06.12.2019. Her averments otherwise establish that she was working at the lowest level of Sales Manager of O.P. and her nature of job is covered within the definition of the workman as defined in section 2(s) of the Act. Designation of an employee is no ground to keep herself out of the purview of definition of workman. when it is established that she was actually doing the work for which she could be assigned the status workman . In other words Beena Gaur is accepted as workman (lady) within the definition of Section 2(s) of ID Act. The unchallenged documents and the evidence of the work lady produced before this Tribunal established that she worked from 01.06.2017 till her termination on 06.12.2019 .The documents clearly established that she worked for 240 days during the preceding 12 months of her termination on 06.12.2019.It is not clear if the work lady was served with notice or notice pay and compensation as envisaged under section 25(F) of the Act. Needless to say the termination of the work lady is retrenchment as found from the unchallenged materials. At this point it appears pertinent to state that at one stage as false allegation against the work lady was brought that she facilitated issuance of policy in favour of one Sunita Tiwari alleged to be dead but the unchallenged documents show that the said allegation was later on unconditionally withdrawn by the O.P. management. On raising of Industrial Dispute by the work lady before the ALC, Central(Kanpur) the representative of the O.P. management had appeared.The unchallenged papers show that work lady Beena Gaur wrote letter of protest alleging discrimination to the CEO of the management. In the view of the unchallenged evidence it is reasonable to conclude that the retrenchment of Beena Gaur was not in accordance with law. Answer to this point goes in favour of the work lady.Beena Gaur work lady was illegally retrenched. Papers show that at one stage the performance of the worklady was highly satisfactory as found from the letter written on 12.06.2018 issued by the O.P. management before effecting retrenchment. Beena Gaur was legally entitled to receive retrenchment compensation which is

equivalent to 15 days salary per year of completed service .It is not clear if Beena Gaur was actually paid retrenchment compensation. Though she is legally entitled to be reinstated with back wages from materials produced before this tribunal it is doubtful if reinstatement is workable.

In view of the scenario stated above allowing compensation in lieu of reinstatement with back wages may be proper. Actual amount of compensation with mathematical accuracy appears to be unworkable. Considering the situation in which she has been rendered jobless one time compensation of rupees 3 lakhs which shall be deposited in her bank account thirty days after publication of this Award. It is to made by the O.P. management telling which the work lady will be entitled to get simple interest 8% per annum till the whole amount is cleared.

Date: 26.09.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1073.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, गेल (इंडिया) लिमिटेड, औरैया (यू.पी.); मेसर्स इंटीग्रेटेड टेलनेट सर्विसेज एंड कॉन्ट्रैक्ट्स, प्रयागराज (यू.पी.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुशांत तिवारी पुत्र स्वर्गीय श्री अशोक कुमार तिवारी औरैया (यू.पी.) बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या (14/2020) प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]
आशीष कुमार यादव, अवर सचिव

New Delhi, the 28 October, 2022

**S.O. 1073.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (14/2020) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, GAIL (India) Limited, Auraiya (U.P.); M/s Integrated Telenet Services & Contracts, Prayagraj (U.P.) and Shri Sushant Tiwari S/o Late Shri Ashok Kumar Tiwari, Auraiya (U.P.).

[No. Z-16025/04/2022-IR(M)]]
ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, KANPUR**

Present : SOMA SHEKHAR JENA
HJS (Retd.)

**I.D. No. 14 of 2020**

**K-10/2-17/2020-IR dated 18.01.2021**

Between

Shri Sushant Tiwari S/o Late Ashok Kumar Tiwari,
Ward No.4, Ambedkar Nagar, Station Road,
Dibiyapur Distt: Auraiya (UP)-206244

**AND**

1. The General Manager (HR),
Gail (India) Limited, P.O Pata,
Vill: Dibiyapur, Distt: Auraiya
(U.P)206244

2. The Manager (HR),
M/s Integrated Telenet Services & Contracts,
A-9, Agnipath Colony, Sapru Road,
Civil Lines, Prayagraj-211001

**AWARD**

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India, Ministry of Labour in letter No. K-10/2-17/2020-IR dated 18.01.2021

**SCHEDULE**

1. ***'Whether the action of management of M/s Integrated Telenet Services & Contracts, a contractor of GAIL(India) Limited, Pata in terminating the services of Shri Sushant Tiwari, Contract Worker w.e.f 01.01.2020 from Telecom Department of GAIL (India) Limited, Pata without following the provisions of Section 25F of I.D Act, 1947, is Legal and justified ? If not, to what relief the workman is entitled to and from which date?***

On receipt of notification, notices were issued to both the parties on 30th June 2021 fixing 03.09.2021 for filing of statement of claim. But none appeared on behalf of claimant workman though on the behalf of O.P. management Authorised Representative filed authority letter on the date fixed.

On perusal of the record it is found that though several dates were fixed for filing the statement of claim none appeared on behalf of the claimant workman before this Tribunal. Despite giving ample opportunities to the claimant union for submitting statement of claim; the union failed to present the case before the Tribunal. On 28.09.2022 the case was reserved for final award for non-appearance of the workers' union.

From the aforesaid circumstances it is presumable that the claimant workman and the union are not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 14.10.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1074.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, गेल (इंडिया) लिमिटेड, औरैया (यू.पी.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री संजय कुमार पुत्र श्री दया राम औरैया (यू.पी.) बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या 47/2020) प्रकाशित करती है।

[सं. जेड -16025/04/2022-IR(M]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28 October, 2022

**S.O. 1074.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (47/2020) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, GAIL (India) Limited, Auraiya (U.P.) and Shri Sanjay Kumar S/o Shri Daya Ram, Auraiya (U.P.)

[No. Z-16025/04/2022-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR**

Present : SOMA SHEKHAR JENA
HJS (Retd.)

**I.D. No. 47 of 2020**

**NO. K-10/2-9/2020-IR dated 10.12.2020**

Between

Sh. Sanjay Kumar S/o Shri Daya Ram,
Sainik Nagar, Diviyapur, Distt: Auraiya
(U.P)-206244

**AND**

The General Manager (HR),
GAIL (India) Limited, PO: Pata,
Vill: Dibiyapur, Distt: Auraiya
U.P - 206244

**AWARD**

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India, Ministry of Labour in letter No. K-10/2-9/2020-IR dated 10.12.2020

**SCHEDULE**

1. ***'Whether the demand of Shri Sanjay Kumar S/O Shri Daya Ram for his regularization of services with the management of GAIL (India) Limited, Pata to the post of Computer Operator, is legal and justified? If not to what relief the workman is entitled to and from which date?'***

On receipt of notification, notices were issued to both the parties on 29th June 2021 fixing 03.09.2021 for filing of statement of claim. But none appeared on behalf of claimant workman though on the behalf of O.P. management Authorised Representative filed authority letter on the date fixed.

On perusal of the record it is found that though several dates were fixed for filing the statement of claim none appeared on behalf of the claimant workman before this Tribunal. Despite giving ample opportunities to the claimant workman for submitting statement of claim; the workman failed to present his case before the Tribunal. On 28.09.2022 the case was reserved for final award for non-appearance of the claimant workman.

From the aforesaid circumstances it is presumable that the claimant workman is not interested in prosecuting his case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 14.10.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2022

**का.आ. 1075.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, गेल (इंडिया) लिमिटेड, औरैया (यू.पी.); मेसर्स इंटीग्रेटेड टेलनेट सर्विसेज एंड कॉन्ट्रैक्ट्स, प्रयागराज (यू.पी.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुनील कुमार शुक्ला पुत्र श्री राम विलास शुक्ला औरैया (यू.पी.) बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या 48/2020) प्रकाशित करती है।

[सं. जेड -16025/04/2022-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 28 October, 2022

**S.O. 1075.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (48/2020) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, GAIL (India) Limited, Auraiya (U.P) and Shri Sunil Kumar Shukla S/o Shri Ram Vilas Shukla, Auraiya (U.P.).

[No. Z-16025/04/2022-IR(M)]
ASHISH KUMAR YADAV, Under Secy.

**ANNEXURE**

**BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR**

**Present :** Soma Shekhar Jena, HJS (Retd.)

**I.D. No. 48 of 2020**

**K-10/2-8/2020-IR dated 10.12.2020**

**Between**

Sh. Sunil Kumar Shukla
S/O Shri Ram Vilas Shukla,
Govind Nagar, Distt. Auraiya
U.P- 206244

**AND**

The General Manager (HR),
GAIL (India) Limited, PO: Pata,
Vill: Dibiyapur, Distt: Auraiya
U.P-206244

**AWARD**

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India, Ministry of Labour in letter No.-K-10/2-8/2020-IR dated 10.12.2020

**SCHEDULE**

1. ***'Whether the demand of Shri Sunil Kumar Shukla S/O Shri Ram Vilas Shukla for his regularization of services with the management of GAIL (India) Limited, Pata to the post of Assistant Librarian, is legal and justified? if not to what relief the workman is entitled to and from which date?'***

On receipt of notification, notices were issued to both the parties on 28th June 2021 fixing 03.09.2021 for filing of statement of claim. But none appeared on behalf of claimant workman on the date fixed though on behalf of O.P management Authorised Representative appeared and authority letter was filed.

On perusal of the record it is found that though several dates were fixed for filing the statement of claim none appeared on behalf of the claimant workman before the Tribunal. Despite ample opportunities to the claimant workman for submitting statement of claim; the claimant failed to present the case before the Tribunal. On 28.09.2022 the case was reserved for final award for non-appearance of the claimant workman.

From the aforesaid circumstances it is presumable that the claimant workman is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 14.10.2022 SOMA SHEKHAR JENA, Presiding Officer

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